

No. _____

IN THE
Supreme Court of Illinois,

APRIL TERM, A. D. 1913.

LA SALLE COUNTY CARBON COAL
COMPANY,

vs.

SANITARY DISTRICT OF CHICAGO,

Appellee,

Appellant.

Appeal from
Circuit Court,
La Salle County.

Honorable
S. C. Stough,
Presiding Judge.

ABSTRACT OF RECORD.

EDMUND D. ADCOCK,
BURNET M. CHIPERFIELD,

ATTORNEYS FOR APPELLANT.

CLAUDE E. CHIPERFIELD,
FRANK J. QUINN,
OF COUNSEL.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE
SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D. 1913.

LA SALLE COUNTY CARBON COAL COMPANY,	} Appeal from Circuit Court, La Salle County. — Honorable S. E. Stough, Presiding Judge.
<i>Appellee.</i>	
<i>vs.</i>	
SANITARY DISTRICT OF CHICAGO,	}
<i>Appellant.</i>	

ABSTRACT OF RECORD.

Page of
Record.

- 1 Praecipe for summons in the case of the LaSalle County Carbon Coal Company *vs.* Sanitary District of Chicago, dated the 11th day of January, 1905. Filed in the office of the clerk of the Circuit Court of LaSalle County, January 14, 1905. Action trespass on the case. Damages claimed, \$200,000.00.
- 2 Summons in the above entitled cause, dated January 14, 1905.
- 3 Return summons showing service upon the defendant upon the 16th day of January, 1905, filed in the office of the clerk of the Circuit Court of LaSalle County, January 23, 1905.

4 DECLARATION.

Be it further remembered, that afterwards, and on, to-wit: the 14th day of January, A. D. 1905, there was filed in said court in said cause a certain declaration in the words and figures following, to-wit:

STATE OF ILLINOIS, }
 LASALLE COUNTY. } ss.

IN THE CIRCUIT COURT,

To the March Term, A. D. 1905.

The LaSalle County Carbon Coal Company, by J. L. O'Donnell, and Duncan, Doyle & O'Connor, its attorneys, complains of the Sanitary District of Chicago, a corporation, defendant, summoned, etc., of a plea of trespass on the case:

For that, whereas, on, to-wit: The 1st day of January, A. D. 1904, the plaintiff was the owner and possessed of certain lands and premises in the County of LaSalle and State of Illinois, described as follows:

The following lands in township thirty-three (33) north and of range one (1) east of the 3rd principal meridian; that part of the southwest quarter and the southeast quarter of section fourteen (14) lying south of the Illinois and Michigan Canal; lots A and B of Canal Commissioners' subdivision of section fifteen (15); that part of the northeast quarter of section twenty-one (21) lying south of the Illinois and Michigan Canal and east of the Illinois River, and that part of the north half and the south half of said section twenty-one (21) lying south of the Illinois River and east of the bayou; that
 5 part of the southeast quarter of section twenty-two (22) lying south of the Illinois River; the northeast quarter of the southeast quarter, the northwest quarter of the southwest quarter, the northwest quarter of the southwest quarter: That part of the northeast quarter of the southwest quarter lying west of the right of way of the Illinois Central Railroad; that part of the southwest quarter of the southwest quarter lying north of the highway east and west across the same; that part of the southeast quarter of the southwest quarter north of the

highway across the same and west of the right of way of the Illinois Central Railroad; the north four and one-half ($4\frac{1}{2}$) acres of the south half of the southeast quarter, all in section twenty-three (23); that part of the northwest quarter of said section twenty-three (23) lying south of the Illinois River and west of the right of way of the Illinois Central Railroad; lot two (2) in the west half of the southwest quarter of section twenty-four (24) in said County and State, and on, to-wit: the day and year last aforesaid, the defendant was a municipal corporation, organized under and by virtue of the laws of the State of Illinois, and invested with certain powers and duties under and by virtue of the statute of the State of Illinois, creating said Sanitary District, and the various amendments thereto, and in and by the statute creating said Sanitary District it was, among other things provided that said Sanitary District should be liable for all damages to real estate without such district

6 which should be overflowed or otherwise damaged by reason of the construction, enlargement or use of any channel, ditch drain, outlet or other improvement, under the provisions of said act creating said Sanitary District.

And plaintiff avers that on, to-wit: the 1st day of January, A. D. 1902, and on divers days prior thereto, the defendant constructed channels, embankments and outlets in the counties of Cook, DuPage and Will, in the State of Illinois, and by means thereof caused large bodies of water to flow from Lake Michigan through said channels into the Des Plaines River and by reason of said embankments, channels and diversions, caused divers other waters to flow into the Des Plaines River which would not flow therein in a state of nature, and which said waters were all conducted through said Des Plaines River into the Illinois River.

And the plaintiff avers that on, to-wit: the day and year last aforesaid and on divers days prior thereto, the said lands and premises of the plaintiff were overflowed, submerged and rendered wet and unprofitable by reason of the construction and enlargement of channels, ditch drains and other outlets by the defendant in the Counties of Cook, DuPage and Will in said State of Illinois, and by reason of the premises the lands of plaintiff aforesaid were diminished in value to the extent of two hundred thousand dollars.

7 And for that, whereas, on, to-wit: the 1st day of March, A. D. 1904, the plaintiff was the owner possessed of certain lands and premises in the County of LaSalle and State of Illinois and has been the owner of the same for more than two years before the date last aforesaid, which premises were described as follows, that is to say:

That part of the southwest quarter of the southeast quarter of section fourteen (14), township thirty three (33) north and of range one (1) east of the 3rd principal meridian, which lies south of the Illinois and Michigan Canal; also lots A and B in Canal Commissioners' subdivision of section fifteen (15) in township thirty three (33) north of Range one (1) east of the Third Principal Meridian; also that part of the northeast quarter of Section twenty-one (21) south of the Illinois & Michigan Canal and east of the Illinois River, and that part of the north half and the south half of said section twenty one (21) south of the Illinois River and east of the bayou, all being in township thirty three (33) north, and of range one (1) east of the Third Principal Meridian; also that part of the southeast quarter of section twenty two (22) township thirty three (33) north and of range one (1) east of the Third Principal Meridian, which lies south of the Illinois River; also that part of

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the northwest quarter of section twenty-three (23) in township thirty-three (33) north and of range one (1) east of the Third Principal Meridian, which lies south of the Illinois River and west of the right of way of the Illinois Central Railroad; also the northeast quarter of the southeast quarter, the northwest quarter of the southeast quarter, the northwest quarter of the southwest quarter; that part of the northeast quarter of the southwest quarter lying west of the right of way of the Illinois Central Railroad, that part of the southwest quarter of the southwest quarter north of the highway east and west across the same; that part of the southeast quarter of the southwest quarter north of the highway east and west across the same and west of the right of way of the Illinois Central Railroad, and the north four and one-half ($4\frac{1}{2}$) acres of the south half of the southeast quarter, all in section twenty three (23), township thirty three (33) north and of range one (1) east of the Third Principal Meridian, except that portion of the same occupied by the right of way of the Chicago, Burlington & Quincy Railroad; also lot two (2) in the west half of the southwest quarter of section twenty four (24) in township thirty three (33) north and of range one (1) east of the Third Principal Meridian.

And on, to-wit: the day and year last aforesaid, the defendant was a municipal corporation, organized under and by virtue of the laws of the State of Illinois, and invested with certain powers and duties under and by virtue of the statute of the State of Illinois, creating said Sanitary District of Chicago, and the various amendments thereto; and in and by the statutes and amendments aforesaid, it was, among other things, provided that said Sanitary District should be liable for all damage to real estate outside of said Sanitary District, which should be overflowed or otherwise damaged, by

9 reason of the turning of the waters of Lake Michigan into the channels, ditches, drains and outlets in carrying out the purposes for which said Sanitary District was created, together with the reasonable attorney's fees for the prosecution of suits for such overflow and damages, to be taxed as costs of suit; and the plaintiff avers that on, to-wit: the day and year last aforesaid, and for a long time before that date, the defendant built and constructed divers ditches, drains, channels and embankments in the Counties of Cook, DuPage and Will, in the said State of Illinois, for the purpose of causing the waters of Lake Michigan to flow down the channel of the Des Plaines River, and also for the purpose of diverting certain waters of the Des Plaines River, which were accustomed to flow towards Lake Michigan, and other waters in the Counties of DuPage and Cook, which were before that time, accustomed to flow into Lake Michigan, down the channel of said Des Plaines River; and said Sanitary District, for the purpose of carrying out its plan and perfecting its system of drainage aforesaid, constructed certain gates on its main channel at Lockport, Illinois; and on, to-wit: the date last aforesaid, turned into the Des Plaines River and through said Des Plaines River into the Illinois River by means of said gates, and also by means of a certain channel, known as the river diversion, constructed by said Sanitary District, large quantities of water, which were before that time not accustomed to flow in said Des Plaines River, and by reason of the turning in of said large quantities of water, the lands and premises of the plaintiff herein before described, were overflowed, submerged, and rendered wet and unfit for use, and were, and have since remained under water, so that the plaintiff was deprived of the use of the same, and said lands became wet, sour, cold and unfit for crops, and overgrown with rank vege-

10 tation, to the permanent injury of the same, and were diminished in value to the extent of two hundred thousand dollars.

And for that, whereas, on, to-wit: the 1st day of January, A. D. 1902, the plaintiff was the owner and possessed of the premises in the aforesaid counts of its declaration herein described, and then, for a long time before that time, had used and enjoyed the same for farming purposes; and said premises were adjacent to the Illinois River, in said LaSalle County, and on, to-wit: the date last aforesaid, the defendant was the owner and possessed of certain channels, ditches, outlets, levees, drains and gates, by the defendant constructed, in the Counties of Cook, DuPage and Will in said state, for the purpose of causing the waters of Lake Michigan to flow into the Des Plaines River in large quantities and through the said Des Plaines River into the Illinois River, and the defendant before that time had cut and removed earth and rock for the purpose of diverting the waters of Lake Michigan towards and into said Des Plaines River, where they had not before that time been accustomed to flow, for the purpose of carrying out the purposes for which the defendant was organized, and on, to-wit: the date aforesaid, the defendant being so possessed of said channel, ditches, embankments, levees, drains and gates, caused large quantities of water to be turned into the Des Plaines River, in the Township of Lockport, in Will County, Illinois, and permitted the same to flow in said Des Plaines River from thence hitherto;
11 and by means of the turning of said large quantities of water into the Des Plaines River, the premises of plaintiff aforesaid, were submerged and overflowed and rendered wet and unprofitable and unfit for farming and other purposes, and certain tile ditches which the plaintiff owned and used in said premises for the pur

pose of draining said premises, were injured by said overflow, and said premises were overgrown with rank vegetation and have so remained from thence hitherto, and by reason of the flooding of the same, said premises have been permanently injured and diminished in value to the extent of two hundred thousand dollars; to the damage of the plaintiff of two hundred thousand dollars.

And therefore it brings suit.

THE LASALLE COUNTY CARBON COAL COMPANY.

By J. L. O'DONNELL, and

DUNCAN, DOYLE & O'CONOR,

Its Attorneys.

J. L. O'DONNELL, and

DUNCAN, DOYLE & O'CONOR,

Attorneys for Plaintiff.

Which said declaration is endorsed upon the back as follows:

"14727 La Salle Co. Carbon Coal Co., vs. Sanitary District. Narr. J. L. O'Donnell, and Duncan, Doyle & O'Conor, Attys. for Complt."

(Also) "FILED JAN 14 1905 J. L. Witzeman Clerk La
12 Salle Co. Circuit Court."

13 Be it further remembered, that afterwards, and on, to-wit: the 15th day of March, A. D. 1905, there was filed in said court in said cause a certain demurrer to *Narr* in the words and figures following, to-wit:

STATE OF ILLINOIS, }
 LaSALLE COUNTY. } ss.

IN THE CIRCUIT COURT.

March Term, A. D. 1905.

La Salle County Carbon Coal Co. }
 vs. } No. 14727.
 Sanitary District of Chicago. } Case.

And the defendant Sanitary District of Chicago, by James Todd, Frank J. Quinn, B. M. Chipperfield and Lincoln & Stead, its attorneys, comes and defends, etc., when, etc., and says that the said declaration and each count thereof and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid action and that the defendant is not bound by law to answer the same; and this it is ready to verify; wherefore for want of a sufficient declaration in this behalf, the defendant prays judgment and that the plaintiff may be barred from maintaining his aforesaid action, etc.

(Signed)

JAMES TODD,
 FRANK J. QUINN,
 B. M. CHIPERFIELD,
 LINCOLN & STEAD,
Attorneys for Sanitary District
of Chicago, Defendants.

Which said remurrer to *Narr* is endorsed upon the back as follows:

“No. 14727. La Salle County Carbon Coal Co. *vs.* Sanitary District of Chicago. Demurrer to *Narr*.”

(Also) “FILED MAR 15, 1905. J. L. Witzeman, Clerk, La Salle Co. Circuit Court.”

- 15 Placita Circuit Court LaSalle County, October Term, A. D. 1905.
- 16 Hearing on demurrer before the Circuit Court of LaSalle County, October 17, A. D. 1905.
- 17 October 20, A. D. 1905, demurrer sustained and leave granted to plaintiff to file an amendment to its declaration within 10 days.
- 18 Amendment to declaration, as follows:

BE IT FURTHER REMEMBERED, that afterwards, and on, to-wit: the 25th day of October, A. D. 1905, there was filed in said court in said cause a certain amendment to *Narr* in the words and figures following, to-wit:

STATE OF ILLINOIS, }
COUNTY OF LASALLE. } ss.

IN THE CIRCUIT COURT OF SAID COUNTY.
of the
OCTOBER TERM, A. D. 1905.

La Salle County Carbon Coal Company	} Gen. No. 14727.
<i>vs.</i>	
Sanitary District of Chicago.	} Case.

In pursuance of leave of court first had and obtained, the plaintiff amends his declaration as follows, to-wit:

1. In place of the year of our Lord, "1902," appearing on the 13th line from the top of the third page of the declaration aforesaid, substitute the year of our Lord "1904".

2. Immediately before the word "flow" on the 13th line from the bottom of page 6 of said declaration, insert the words "and did naturally".

3. After the word "flow" in the 12th line from the bottom of the 6th page of said declaration, insert the words "and it did naturally flow".

4. Before the word "flow" in the 4th line from the bottom of said sixth page, insert the words "and did not naturally".

5. Before the word "flow" on the 12th line from the bottom of the seventh page of said declaration, insert the words "and did not naturally".

(Signed) J. L. O'DONNELL, and
DUNCAN, DOYLE & O'CONOR,
Attorneys for Plaintiff.

20 Placita LaSalle County Circuit Court, March Term, 1906.

21 April 13, 1906, order continuing the case to the October Term, 1906, by agreement.

22 Placita Circuit Court of LaSalle County, October Term, 1906.

23 October 8, 1906, stipulation between the plaintiff and the defendant continuing the case until the October Term, 1907, of the LaSalle County Circuit Court.

24 Order continuing the cause.

25 Placita Circuit Court of LaSalle County, October Term, 1907.

26 October 14, 1907, order continuing the cause by agreement.

27 Placita Circuit Court of LaSalle County, October Term, 1908.

28 December 17, 1908, on the motion of B. M. Chipfield and F. J. Quinn the appearance of all other attorneys for the defendant is hereby withdrawn. Appearance of F. J. Quinn and B. M. Chipfield entered as attorneys for defendant.

Leave granted to defendant to plead by January 1, A. D. 1909.

- 29 December 30, 1908, demurrer to amended declaration
filed.
- 31 Placita Circuit Court of LaSalle County, June Term,
1909.
- 32 July 3, 1909, demurrer to declaration withdrawn.
Rule on the defendant to plead on or before August
1, 1909.
- 34-36 July 14, 1909, stipulation as to the order of trials of
cases against the Sanitary District in the Circuit Court
of LaSalle County.
- 37 September 4, 1909, plea of the general issue filed, as
follows:

STATE OF ILLINOIS, }
COUNTY OF LASALLE. } ss.

IN THE CIRCUIT COURT,
June Term, A. D. 1909.

La Salle County Carbon Coal Company } General Num-
vs. } ber 14727.
Sanitary District of Chicago.

And the defendant, Sanitary District of Chicago, by Frank J. Quinn and B. M. Chipfield, its attorneys, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, in manner and form as the plaintiff has above thereof complained against it; and of this the defendant puts itself upon the country, etc.

(Signed) FRANK J. QUINN,
B. M. CHIPERFIELD,
Attorneys for Defendant.

says that the plaintiff ought not to have its aforesaid action against it, the defendant, because, it says, that the channel, ditch, drain and outlet of the defendant described in the amended declaration herein was constructed, erected and built under and by virtue of authority of the laws of the State of Illinois, and in strict accordance therewith and pursuant to said authority, was opened on the 17th day of January, A. D. 1900, in accordance with the laws of the State of Illinois, and that the same then was and from thence hitherto has been and still is a lawful, permanent structure and improvement, and that on said date the plaintiff was not the owner in fee simple of the real estate described in said amended declaration, or any part or portion thereof; and this the defendant is ready to verify; wherefore it prays judgment if the plaintiff ought to have its aforesaid action against it, etc.

(Signed) FRANK J. QUINN,
B. M. CHIPERFIELD,
Attorneys for Defendant.

- 42 Placita LaSalle County Circuit Court, October Term, 1909.
- 43 October 11, 1909, petition for a change of venue from Judges Eldredge and Skinner.
- 44 October 12, 1909, motion for change of venue overruled. Defendant excepts.
- 45 Order setting case for trial November 8, 1909.
- 46-55 Bill of exceptions filed in the Circuit Court of LaSalle County on the 18th day of October, A. D. 1909, in the above entitled cause, upon the motion for change of venue and in relation to proceedings therein.

(This petition for change of venue is not abstracted herein for the reason that it does not pertain in any way to the appeal which is here prosecuted.

- 56 Placita LaSalle County Circuit Court, January Term, 1910.
- 57-58 Stipulation of the parties continuing cause to January 17, 1910.
- 59-60 January 17, 1910, stipulation continuing causes.
- 61 Placita Circuit Court of LaSalle County, January Term, 1912.
- 62 February 16, 1912, rule upon the defendant to rejoin to replications within ten days.
- 63-64 February 16, 1912, replication of plaintiff to certain pleas of the defendant as follows:

STATE OF ILLINOIS, }
 LaSALLE COUNTY. } ss.

IN THE CIRCUIT COURT OF THE JANUARY TERM, A. D. 1912.

La Salle County Carbon Coal Company, }
vs. } 14727.
 Sanitary District of Chicago.

And the plaintiff as to the plea of the defendant first above pleaded, wherein it puts itself upon the country, doth the like.

And the plaintiff as to the plea of the defendant by it secondly above pleaded says that it, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having its aforesaid action because it says that the said several causes of action and each and every of them did accrue to it within five years next before the commencement of this suit, in manner and form as it has above complained against the defendant; and this the plaintiff prays may be inquired of by the country, etc.

And the plaintiff as to the plea of the defendant by it thirdly above pleaded says that it, the plaintiff, by reason of anything in that plea alleged, ought not to be

barred from having its aforesaid action because it says that it, the plaintiff, was, at the time and date in said plea alleged, the owner of the premises described in its declaration, and each and every part thereof, in manner and form as in its declaration alleged.

And this the plaintiff prays may be inquired of by the country, etc.

(Signed.) J. L. O'DONNELL, and
DUNCAN, DOYLE & O'CONNOR,
Attorneys for Plaintiff.

65 February 26, 1912, extension of rule to plead to amended declaration of ten days.

66 March 1, 1912, rejoinder to plaintiff's replication as follows:

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT, MARCH TERM, A. D. 1912.

La Salle County Carbon Coal Company, }
vs. }
Sanitary District of Chicago. }

And now comes the defendant, and for a rejoinder to the replication of the plaintiff to the plea of the defendant by it secondly above pleaded, wherein it puts itself upon the country, doth the like.

And now comes the defendant, and for a rejoinder to the replication of the plaintiff to the plea of the defendant by it thirdly above pleaded, wherein the plaintiff puts itself upon the country, doth the like.

(Signed.) B. M. CHIPERFIELD,
FRANK J. QUINN,
Attorneys for Defendant.

68-69 March 1, 1912, defendant's fourth plea as follows:

STATE OF ILLINOIS, }
LA SALLE COUNTY, } ss.

IN THE CIRCUIT COURT, MARCH TERM, A. D. 1912.

La Salle County Carbon Coal Company, } General
vs. }
 Sanitary District of Chicago. } No. 14,727.

And the said defendant, the Sanitary District of Chicago, by B. M. Chipfield and Frank J. Quinn, its attorneys, for a further plea in this behalf, says that the plaintiff ought not to have and maintain its aforesaid action against it, the said defendant, because it says that it has not done any act, nor is it guilty of any grievance as alleged in the plaintiff's declaration, or any count thereof, that has damaged or injured the said lands of the said plaintiff, as described in the plaintiff's declaration, for any use to which, under the law of the State of Illinois and by the articles of incorporation of the said plaintiff, or the powers and authority with which it, the plaintiff, the La Salle County Carbon Coal Company, is by law invested, or has the lawful power or authority to own, hold, enjoy or use the said lands, namely, for the purpose of mining, coking and selling coal, or any use necessarily incident thereto, which the defendant avers is the sole purpose for which the plaintiff has the right to own, hold, use, employ or enjoy said lands, so described in the said declaration; and this the defendant is ready to verify, wherefore it prays judgment if the plaintiff ought to have its aforesaid action against it, etc.

(Signed.) B. M. CHIPERFIELD,
FRANK J. QUINN,
Attorneys for Defendant.

70 March 8, 1912, demurrer by the plaintiff to the fourth
plea of the defendant.

- 72 Placita, Circuit Court of La Salle County, March Term,
1912.
- 73 March 13, 1912, order of the court sustaining demurrer
to the fourth plea of the defendant. The defendant ex-
cepts and abides it forth pleading.
- 74 March 21, 1912, the court grants leave to plaintiff to
amend declaration. Rule entered upon the defendant to
plead to declaration as amended within ten days.
- 75 Amendment to declaration, as follows:

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF SAID COUNTY, MARCH TERM, A.
D. 1912.

La Salle County Carbon Coal Company, } Case.
vs. } Gen. No.
Sanitary District of Chicago. } 14,727.

In pursuance of leave of court first had and obtained, the plaintiff amends its declaration as follows:

That the 10th line from the bottom of fifth page of said declaration which now reads as follows: "the southwest quarter of the southwest quarter north of the," be made to read in lieu thereof as follows: "the southeast quarter of the southwest quarter north of the."

(Signed.) J. L. O'DONNELL, and
DUNCAN, DOYLE & O'CONNOR,
Attorneys for Plaintiff.

- 76 March 28, 1912, motion by the defendant for a con-
tinuance until the next term of court.
- 77 April 2, 1912, the court overruled motion for a con-
tinuance to the next term of court.
- 78 April 10, 1912, order setting case for trial April 15,
1912, at 1:30 P. M.

79 April 15, 1912, motion for a continuance. Motion allowed.

80-81 May 18, 1912, defendant files plea as follows:

STATE OF ILLINOIS,)
LA SALLE COUNTY. } SS.

IN THE CIRCUIT COURT, MARCH TERM, A. D. 1912.

La Salle County Carbon Coal Company, } Gen. No.
vs. } 14,727.
 Sanitary District of Chicago.

And the said defendant, the Sanitary District of Chicago, by B. M. Chipperfield and Frank J. Quinn, its attorneys, for a further plea in this behalf, says that the plaintiff ought not to have and maintain its aforesaid action against it, the said defendant, because it says that it had not done any act, nor is it guilty of any grievance as alleged in the plaintiff's amended declaration, or any count thereof, that has damaged or injured the said lands of the said plaintiff, as described in the plaintiff's amended declaration, for any use to which, under the laws of the State of Illinois, and by the articles of incorporation of the said plaintiff, or the powers and authority with which it, the plaintiff, the La Salle County Carbon Coal Company, is by law invested, or has the lawful power or authority to own, hold, enjoy, or use the said lands, namely, for the purpose of mining, coking and selling coal, or any use necessarily incident thereto, which the defendant avers is the sole purpose for which the plaintiff has the right to own, hold, use, employ or enjoy said lands, so described in the said amended declaration. And this the defendant is ready to verify, wherefore it prays judgment if the plaintiff ought to have its aforesaid action against it, etc.

(Signed.) B. M. CHIPERFIELD,
FRANK J. QUINN,
Attorneys for Defendant.

82 Placita, La Salle County Circuit Court, June Term,
1912.

83 Order setting cause for trial November 6, 1912.

84 Placita, La Salle County Circuit Court, October Term,
1912.

85 November 7, 1912, the court sustains demurrer of the
plaintiff to the defendant's plea of the statute of limita-
tions to the declaration as amended. The defendant
abides its special plea of the statute of limitations to
the declaration as amended.

Defendant moves the court for leave to file a plea of
nul tiel corporation.

Plaintiff objects; objection sustained.

Defendant is granted leave to refile its pleas hereto-
fore, filed of the general issue, the statute of limitations
86 and non-ownership, and it is ordered by the court that
the same stand as pleas to the declaration as amended.

Plaintiff is granted leave to re-file its demurrer to the
defendant's fourth plea. Demurrer sustained. Defend-
ant abides by its said fourth plea.

Leave granted to the plaintiff to re-file its replications
heretofore filed to the defendant's first, second and third
pleas, and to the defendant to re-file its rejoinders here-
tofore filed herein to the replications of the plaintiff to
the defendant's first, second and third pleas.

87 November 11, 1912, case called for trial. Jury selected.
Adjourned until the following day.

88 November 12, 1912, hearing continued, adjournment
until the following day.

89 November 13, 1912, hearing continues, adjourns until
the following day.

90 November 14, 1912, hearing continues, adjourns until
the following day.

- 91 November 15, 1912, hearing continues, adjournment until Monday morning next.
- 92 November 18, 1912, hearing continues, adjourned until the following day.
- 93 November 19, 1912, hearing continues, adjourned until the following day.
- 94 November 20, 1912, hearing continues, adjourned until the following day.
- 95 November 21, 1912, hearing continues, adjourned until the following day.
- 96 November 22, 1912, hearing continues, adjourned until Monday morning next.
- 97 November 25, 1912, hearing continues, adjourned until the following day.
- 98 November 26, 1912, hearing continues, adjourned until the following day.
- 99 November 27, 1912, hearing continues, adjournment until Monday morning next.
- 100 December 2, 1912, hearing continues, adjourned until the following day.
- 101 December 3, 1912, hearing continues, adjourned until the following day.
- 102 December 4, 1912, hearing continues, adjourned until following day.
- 103 December 5, 1912, evidence concluded. Arguments of counsel presented to the jury. Further hearing postponed until following morning.
- 104 December 6, 1912, argument continued. Jury instructed. Retired in charge of an officer.
- 105 December 7, 1912, verdict of jury returned into open court as follows: "We, the jury, find the defendant guilty and assess the plaintiff's damages at the sum of \$35,000."
- 106 December 11, 1912, the defendant, by its attorneys, moves the court to set aside the verdict and for a new trial herein.

(Note. Motion for new trial set forth in bill of exceptions.)

- 108 January 4, 1913, defendant moves the court for leave to withdraw its motion to set aside verdict and for new trial heretofore entered herein, and defendant's points in support thereof heretofore filed herein. Motion granted by the court.

Defendant moves the court that judgment be rendered herein for the defendant *non obstante veredicto*.

Motion overruled; defendant excepts to said ruling.

Defendant re-files and renews its motion to set aside the verdict and for a new trial.

Motion overruled by the court; defendant excepts to such ruling.

Motion by the defendant in arrest of judgment.

Motion overruled; defendant excepts to such ruling.

- 109 Plaintiff, by its attorneys, moves the court for an order fixing attorneys' fees and taxing same as costs.

Defendant moves the court for a rule on plaintiff to file a bill of particulars on their claim for attorney's fees. Motion sustained and rule entered to file a bill of particulars on its claim for attorneys' fees by Tuesday morning next, and the hearing on said motion of plaintiff for an order fixing attorneys' fees and taxing the same as costs is postponed until Saturday morning next at 10:30 o'clock A. M.

- 110 January 11, 1913, defendant moves the court for a rule on plaintiff to file a more specific bill of particulars on its claim for attorneys' fees, and the defendant, by its attorneys, protests against proceeding with the hearing on such claim until said bill of particulars is filed herein, and moves the court for a continuance of said hearing.

Motion overruled; defendant excepts to such ruling.

Defendant moves the court for an entry of judgment herein.

Plaintiff objects; objection sustained; defendant excepts.

Thereupon the defendant, by its attorneys, enters a protest against being required to appear upon the question of taxation of any costs herein until judgment has been entered herein against one of the parties to the suit.

Motion overruled; defendant excepts.

- 111 Plaintiff's motion for an order fixing its attorneys' fees and taxing same as costs comes on to be heard. The court having heard all of the evidence submitted, the plaintiff, by its attorney, moves the court for a judgment on the verdict.

To which the defendant, by its attorney, objects; objection overruled; defendant excepts.

The court renders judgment in favor of the plaintiff for \$35,000 and its costs and charges, by it, in its behalf, expended and that it has execution therefor.

The defendant excepts.

The court hears arguments and suggestions of counsel on plaintiff's motion to assess plaintiff's attorneys' fees and tax the same as costs. The court assesses said plaintiff's attorneys' fees at \$5,000.

And it is ordered by the court that \$5,000 attorneys' fees be taxed herein as a part of the costs.

Exception by the defendant.

Defendant prays an appeal to the Supreme Court of the State of Illinois. Appeal granted. Defendant allowed sixty days in which to prepare and tender its bill of exceptions.

- 112 Defendant, by its attorneys, prays an appeal to the Appellate Court of the Second District of the State of Illinois on the order of the court allowing attorneys' fees

and taxing the same as costs. Appeal granted. Defendant allowed thirty days in which to prepare and tender its bill of exceptions.

113 Bill of exceptions in the above entitled cause filed . . . day of, A. D. 1913, as follows:

114 November 7, 1912, cause comes on for trial.

115 Jury excused until Monday morning.

116 Defendant asks leave to file plea of *nul tiel* corporation as follows:

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE LA SALLE COUNTY CIRCUIT COURT, NOVEMBER
TERM, A. D. 1912.

La Salle County Carbon Coal Company, {
vs. }
Sanitary District of Chicago. }

And for a further plea in its behalf the defendant says that the plaintiff ought not to have its aforesaid action against it, the defendant, because it says there is not, nor was, at the time of the commencement of this suit any such corporation as the La Salle County Carbon Coal Company, as by the said declaration is above supposed; and of this the defendant put itself upon the country, etc.

(Signed.) CHIPERFIELD & CHIPERFIELD,
*Attorneys for the Sanitary
District of Chicago.*

117 Objection by the plaintiff to the filing of such plea.

118-130 Argument of counsel upon the right to file the *nul tiel* corporation.

130-131 Decision on motion by the court denying motion to file plea of *nul tiel* corporation.

Exception by the defendant.

133-140 Order by the court and argument of counsel with reference to the settling of pleadings as heretofore set forth in the record.

141-350 November 11, 1912, examination of jury by counsel for the respective parties, and replies of jurors thereto.

(This portion of the record is not abstracted for the reason that no questions are raised in connection therewith in any way that affects this appeal and no error is assigned in connection with the examination and selection of the jury herein.)

351-353 Admonition by the court to the jury.

354-363 Argument of counsel with reference to requiring the plaintiff to produce certain books of account.

364 Commencement of opening statement for plaintiff by Mr. O'Connor.

368 Extract from opening statement:

“There is no question in this case about the turning in of the water. This defendant will admit that. They will admit they have turned the water into this valley but they enter a denial in toto that practically says they have not damaged this land or any other land.”

Mr. CHIPERFIELD: We object to the statement concerning any other land.

The COURT: Well, I overrule the objection.

Exception by the defendant.

373 Extract from opening statement of Mr. O'Connor:

“They will admit they have raised it some; how much I don't know.

Mr. CHIPERFIELD: I object to the statement. We make no such admission.

Mr. O'CONOR: I am wrong about it. They won't admit anything.

Mr..CHIPERFIELD: I object to the statement of counsel and ask for a ruling.

The COURT: I think I will overrule the objection.

To which ruling of the court the defendant by its counsel then and there duly excepted.”

375 Opening statement for the defendant by Mr. Chiperfield.

377 Extract from opening statement by Mr. Chiperfield:

From the statement which was made here you would get the idea that the plaintiff, the La Salle County Carbon Coal Company was a farmer, but I want to assure you that the evidence in this case will show you no such condition of affairs. The La Salle County Carbon Coal Company is a coal mining corporation, capitalized at one million dollars; a coal mining corporation whose sole business is the business of digging, coking and selling coal; all the rights it has under its charter; not a farmer going around in overalls and top boots.

Mr. O'CONOR: We object to that statement, your Honor. That has already been passed upon by the court and is a matter of law.

The COURT: I think I will sustain the objection.

Defendant excepts.

Mr. CHIPERFIELD: To what part of my statement, your Honor?

Mr. O'CONOR: I think it ought to be sustained to all of that, your Honor, that makes a reference to the officers of the company.

The COURT: No, I will let that stand.

Mr. CHIPERFIELD: I want to conform to the ruling of the court and I would like to know what part of my statement the objection was sustained to.

The COURT: I think your statement as to who the

officers were was all right, because I can see that might have a bearing on the case. I don't know.

Mr. CHIPERFIELD: Surely it is all right.

The COURT: The fact it is a corporation that has no business except coal mining and is not a farmer,—I don't think that is proper.

Mr. CHIPERFIELD: Isn't it proper to say it is a corporation when it is so stated in the declaration?

The COURT: I sustained the objection.

Mr. CHIPERFIELD: I want to conform to your Honor's ruling and I ask in all earnestness why it is not proper
279 for me to state—

The COURT: The court has passed upon that question and decided it is a matter of immateriality whether it is a corporation for coal mining purposes or not. As I understand, this corporation has a right to hold this land as a farmer, and you have no right to question that in your case.

Mr. CHIPERFIELD: No, that is not the purpose of my statement, if your Honor please. My statement is as to the form of organization as to this company, that it is a corporation and it is embodied in this declaration, and why cannot this jury be told it is a corporation? I want to preserve this record and I want to do it in all fairness, but does your Honor hold for a minute it is incompetent to tell this jury it is a corporation, when they sue as a corporation?

The COURT: I have ruled on it and another court has ruled on it and sustained it.

Mr. CHIPERFIELD: I do not question your Honor's ruling and I do not care for the ruling of any other court, but I do want to state to this jury, your Honor, that this is a corporation.

The COURT: I will let you state that. I don't object to that.

381 Extract from opening statement of Mr. Chipperfield:

"It will also be shown, gentlemen, that some of this land has been used for agricultural purposes at different times, and the proof will be that some of it, at different times, has rented for a dollar an acre.

382 Mr. O'CONOR: To which we object, your Honor.

Mr. CHIPPERFIELD: We expect to prove it.

Mr. O'CONOR: You can't prove it.

Mr. CHIPPERFIELD: I object to the conduct of counsel as highly improper, interrupting my statement, and making a statement which I make to the jury is not true and cannot be proven.

Mr. O'CONOR: Just a minute. I make an objection and he turns to me and says, 'We will prove it' and I say he can't.

Mr. CHIPPERFIELD: I object to the statement of counsel as improper and the conduct of counsel as improper.

The COURT: I will sustain both of your objections.

Mr. O'CONOR: That is even.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPPERFIELD: I object to the last statement of counsel as improper.

The COURT: I think you have a right to address the jury and I think he has a right to make an objection. I would have overruled his objection if you had given me time.

Mr. O'CONOR: I think, your Honor, when counsel is making a statement to the jury and the statement is made that his statement is true, and counsel merely takes

his seat, he treats it with more moderation than is usually given in a court of justice. If you had taken your seat and given me a chance to say something—

Mr. CHIPERFIELD: I thought this was my statement, my address to the jury.

Mr. O'CONOR: It is, Mr. Chiperfield.

Mr. CHIPERFIELD: Until I can be treated properly I will wait.

Mr. O'CONOR: I simply made an objection to the court.

The COURT: I have ruled on it.

Mr. O'CONOR: Very good.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: I want to object to the last conduct of counsel as improper."

392 Extract from the statement of Mr. Chiperfield.

"And we will narrate and prove to you by witnesses who will come here for that purpose that a vast number of crops that can be successfully and profitably raised in the State of Illinois, are not raised on this land simply because they will not put it to that use until this law suit is over.

Mr. O'CONOR: I object to the fairness of that statement.

The COURT: Sustain the objection.

The defendant excepts."

399 Extract from statement of Mr. Chiperfield:

"And when these gentlemen pretend to say that the Illinois River in times of low water is raised from four to six feet in times of high water that it has raised from four to six feet, we say from our knowledge of this subject that it is an absurdity, a silly statement; it is not

correct. And we expect the evidence in the case will demonstrate conclusively and plainly that it is not correct, that it is made simply for the purpose of enhancing the damages in this case. It is not correct. I don't care who says it is correct, the evidence in this case will demonstrate it is not.

Mr. O'CONOR: Your Honor, we object to this argument.

Mr. CHIPERFIELD: That is my statement.

The COURT: I will sustain the objection to the last.

Defendant excepts.

Mr. O'CONOR: State facts, please.

407 HOWARD S. HAZEN, a witness for the plaintiff being sworn,
testifies as follows:

Direct Examination by Mr. Butters.

My name is Howard S. Hazen. I live in La Salle. I have lived there thirty-six years. I am in the coal mining business for the La Salle County Carbon Coal Company. I am general manager. Have been with that company since 1884. I was bookkeeper and pay roll clerk from 1884 to 1890. The works of the La Salle County Carbon Coal Company are located at La Salle and Peru. The lands are located in 15 in La Salle and 16 in Peru and 4 in the Town of Eden. I first saw Exhibit 4 in the manager's office of the La Salle County Carbon Coal Company in 1890, about fourteen years subsequent to the date of the instrument; six years subsequent to the date of recording; six years to the date of the deed. I suppose Exhibit 1 has been kept in the manager's office in Chicago. I first found it there.

Supposition stricken out by the court.

I found it there in November, 1911. I found that deed
 411 in the Illinois Trust & Savings Deposit box in Chicago.
 This box was in the custody of F. O. Wyatt, general manager of the La Salle County Carbon Coal Company.

Plaintiff offers in evidence Plaintiff's Exhibit 1 together with certificates of recording thereto attached and the certificate of acknowledgement.

Mr. CHIPERFIELD: * * * I would like to have the opportunity of asking the witness a question out of the presence of the jury.

412 The jury retires. The testimony continued out of the presence of the jury.

413 Mr. CHIPERFIELD: Q. The La Salle County Carbon Coal Company which is named as grantee in this deed is the plaintiff in this case?

A. Yes sir.

There has never been more than one La Salle County Carbon Coal Company. I never knew of but one charter dated 1883 or 1884. I don't know of any other La Salle County Carbon Coal Company except the La Salle County Carbon Coal Company that was organized under this charter of 1883. It is still operating under that charter. It is the plaintiff in this case. I have not the charter with me.

414 Mr. CHIPERFIELD: You were asked, gentlemen, to produce that charter. Have you the charter available?

Mr. O'CONOR: We have it.

(Charter handed to the witness.)

The duration of the charter shall be fifty years. The date of the charter is the 8th day of November, 1883.
 415 There was a reorganization of this company in 1893, where the capital stock was increased from \$70,000 to \$75,000. It was reorganized, yes sir. There was another

reorganization where the capital stock was increased to \$1,000,000. The same charter was continued. The object for which this charter was taken out was for the selling and mining of coal and coke. It is so stated.

Q. It is so limited by your charter, is it not? A. So stated. I don't know whether it is limited or not."

416 I don't know whether there is a limitation.

Objection by the plaintiff that the charter is the best evidence; objection sustained; defendant excepts.

Mr. CHIPERFIELD: Now, then, in connection with the foundation which is being offered, and for the purpose of having it solely before the court, I want to have the charter incorporated in this examination.

Objection by plaintiff.

The COURT: I will let it go in in the absence of the jury.

Mr. CHIPERFIELD: Simply for the foundation.

It is to lay the foundation for the admission of this deed; it is for the record and not for the jury.

417 The charter of the La Salle County Carbon Coal Company was received in evidence by the court, marked Exhibit 2 and is in words and figures following, to-wit:

EXHIBIT 2.

"STATE OF ILLINOIS,

DEPARTMENT OF STATE.

Henry D. Dement.

Secretary of State.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, a statement, duly signed and acknowledged, has been filed in the office of the Secretary of State, on the 24th day of August, A. D. 1883, for the organization of the LA SALLE COUNTY CARBON COAL COMPANY under and in accordance with the provisions of 'AN ACT CONCERN-

ING CORPORATIONS,' approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which statement is hereto attached;

AND WHEREAS, a license has been issued to EDMOND D. TAYLOR, ISAAC W. ROGERS and WILLIAM W. TAYLOR, as commissioners to open books for subscription to the capital stock of the said company;

AND WHEREAS, the said commissioners have, on the 8th 418 day of November, A. D. 1883, filed in the office of the Secretary of State a report of their proceedings under said license, a copy of which report is hereto attached;

NOW, THEREFORE, I, HENRY D. DEMENT, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify that the said LA SALLE COUNTY CARBON COAL COMPANY, is a legally organized corporation under the laws of this state.

(Seal of the State)
(of Illinois, August)
(26, 1818.)

IN TESTIMONY WHEREOF, I, hereto set my hand and cause to be affixed the great seal of State. Done at the City of Springfield, this eighth day of November, in the year of our Lord, one thousand eight hundred eighty-three and of the independence of the United States the one hundred and eight.

HENRY D. DEMENT,
Secretary of State.

STATE OF ILLINOIS, }
LA SALLE COUNTY. } ss.

Amount paid \$.....

To HENRY D. DEMENT, Secretary of State:

We, the undersigned EDMOND D. TAYLOR, ISAAC W. ROGERS and WILLIAM W. TAYLOR, propose to form a corporation under an act of the general assembly of the 419 State of Illinois, entitled 'An act concerning corpora-

tions.' Approved April 18, 1872, and all acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to-wit:

1. The name of said corporation is LA SALLE COUNTY CARBON COAL COMPANY.

2. The object for which it is formed is mining, coking and selling coal.

3. The capital stock shall be FIVE HUNDRED THOUSAND DOLLARS.

4. The amount of each share is ONE HUNDRED DOLLARS.

5. The number of shares FIVE THOUSAND.

6. The location of the principal office is in La Salle, in the County of La Salle, State of Illinois.

7. The duration of the corporation shall be fifty (50) years.

E. D. TAYLOR,

I. W. ROGERS,

WILLIAM W. TAYLOR.

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

I, CHARLES L. BRADFORD, a notary public, in and for the county and state aforesaid, do hereby certify that on the 23d day of August, A. D. 1883, personally appeared before me

EDMUND D. TAYLOR,

ISAAC W. ROGERS, and

WILLIAM W. TAYLOR,

to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they executed the same for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

[SEAL.] CHARLES L. BRADFORD,
Notary Public.

Full paid \$500,000.

To Honorable Henry D. Dement, Secretary of State of the State of Illinois:

The commissioners duly authorized to open Books of Subscription to the Capital Stock of the La Salle County Carbon Coal Company pursuant to license heretofore issued bearing date the 24th day of August, A. D. 1883, do hereby report that they opened Books of Subscription to the Capital Stock of said company, and that the said stock was fully subscribed; that the following is a true copy of such subscription, viz: We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names to the capital stock of the La Salle County Carbon Coal Company, and we severally agree to pay the said company, for each share, the sum of One Hundred Dollars.

Names.	Shares.	Amount.
Isaac W. Rogers	4996	\$499,600
E. D. Taylor	1	100
J. R. Doolittle	1	100
James F. Joy	1	100
James Goggin	1	100

and they do further report, the organization of said company took place as follows, viz:

At a meeting of the subscribers to the capital stock of the La Salle County Carbon Coal Company, held at room 33 Howland Block, Chicago, November 7, 1883, the following named subscribers were present, viz:

Isaac W. Rogers, subscriber for 4,996 shares.

Edmund D. Taylor, subscriber for 1 share.

James F. Joy, subscriber for one share.

James Goggin, subscriber for one share.

James R. Doolittle, subscriber for one share.

Whereupon James F. Joy was unanimously chosen chairman or president of said meeting, and James R. Doolittle was unanimously chosen secretary.

Thereupon it was unanimously resolved that the above named stockholders be elected directors of said company 422 for the ensuing year. It appearing that all of the subscribers to the capital stock of said company were present, and unanimously voted for the election of such directors, it was deemed unnecessary, for that reason, that any notice of such election should be published.

On motion the meeting of stock holders was adjourned *sine die*.

Immediately after the adjournment of the meeting of the stockholders at the same place and on the same day, there was held a meeting, being the first meeting of the directors of the La Salle County Carbon Coal Company.

At such meeting, the following named persons, being all of the directors of said company, to-wit: James F. Joy, Edmund D. Taylor, James Goggins, Isaac W. Rogers, and James R. Doolittle were present.

Whereupon said meeting being called to order, on motion it was resolved that James F. Joy be chosen president of said meeting.

On motion, James R. Doolittle was appointed secretary of this meeting.

On motion, it was resolved that James F. Joy, be elected president of said company.

On motion, it was resolved that Jaspar Johnson be elected secretary and treasurer of said company.

E. D. TAYLOR,

ISAAC W. ROGERS,

WILLIAM W. TAYLOR.

423 STATE OF ILLINOIS, }
COUNTY OF COOK. } SS.

Edmund D. Taylor, and Isaac W. Rogers, being duly sworn, say that they have read the above report subscribed to by them as commissioners, and that the same is in all respects true.

E. D. TAYLOR,
ISAAC W. ROGERS.

Subscribed and sworn to before me this 7th day of November, A. D. 1883.

Witness my hand and official seal.

[SEAL.] HENRY McKEY,
Notary Public.
Cook County, Illinois.

(On the back of the foregoing instrument appears the following endorsement):

“Certificate of incorporation
of the
La Salle County Carbon Coal Company.
Nov. 8, '83.

STATE OF ILLINOIS, }
LA SALLE COUNTY. } SS. No. 31,232.

This instrument was filed for record this 10th day of November, A. D. 1883, at 10 o'clock A. M. and is duly rec-
424 orded in book 241 of records, page 122.

STEPHEN ARNOLD,
Recorder.”

The COURT: Well, you may call the jury back. You are through.

Mr. CHIPERFIELD: Q. Well, let us see. You say, Mr. Hazen, you are the general manager of this concern?

A. Yes, sir.

In a general way my duties are looking after the mining and selling of the coal and I have charge of the other properties. I have charge of the company's records. I am secretary of the company.

The COURT: Let the record show that the jury is recalled.

(Whereupon the jury resumed its place and the following proceedings were had in its presence.)

Mr. BUTTERS: Will you mark these documents Exhibits 3, 4, 5, 6, 7, 8 and 9?

Q. Now, Mr. Hazen, you may look at the papers I now show you marked Exhibits 3, 4, 5, 6, 7, 8 and 9 and state where you first saw those papers?

426 A. I saw those papers in 1884 in March, in the office of the Illinois Valley Coal Company, at Oglesbee, Jonesville near La Salle, in the manager's office, secretary's office.

Q. Now, then, since you saw those papers, and the one included in the previous question, marked Exhibit 1, what was done subsequent to that time with the lands described in these several exhibits 1 to 9, I think, inclusive? A. Three to nine. One is the original.

427 Objection by the defendant, as being incompetent, irrelevant and immaterial, and that no proper foundation has been laid for the admission of the testimony at this time; that it does not tend to prove any of the issues of this case; that it tends to create a variance between the allegation of the plaintiff's declaration, which alleges ownership, and the testimony which is now being offered.

Objection overruled; defendant excepts.

428 Objection by the defendant that the lands concerning which the question is asked do not appear to be the same lands embraced in the declaration.

The COURT: I think I will let him answer the question.

Exception by the defendant.

A. Such part as was favorable for agricultural purposes was operated that way.

Motion by the defendant to strike out the answer.

Motion overruled; defendant excepts.

Mr. BUTTERS: Q. In whose possession were the lands mentioned in the several deeds to which your attention has been called and numbered Exhibits 1 and 2 to 9, inclusive?

Objection by the defendant.

429 The COURT: I think I will let him answer.

Exception by the defendant.

Mr. CHIPERFIELD: Pardon me, I want to state my objection. I object to it for the reason it does not embrace the land described in the plaintiff's declaration; that it embraces a large quantity of land other than the land described in the plaintiff's declaration, thereby tending to raise a collateral issue, not one which is involved in this suit; and for the further reason that it is calling for the conclusion of the witness. * * * The court ought to be advised, if he is not, that there are many hundred acres of land which are not embraced in this suit at all described in those deeds.

Mr. O'CONOR: Well, that is very true.

The COURT: I think I will let him answer the question.

430 Exception by the defendant.

Mr. CHIPERFIELD: There are in these deeds a large number of other tracts of land described other than those that are involved in this suit. If they are offered and received in evidence at all they are offered and received in evidence because they are material to sustain the issue in this case. It seems to me apparent at a glance that

those portions of land which are not involved in this suit—

The COURT: Let me ask you a question.

Mr. CHIPERFIELD: Certainly.

The COURT: Are there some deeds there that do not include any portion of the land in controversy?

431 Argument upon objection.

433 The COURT: I think I will let him answer.

Defendant excepts.

A. In possession of the Illinois Valley Coal Company.

Answer stricken out by the court.

434 In March, 1884, the Illinois Valley Coal Company sold their property to the owners of the La Salle County Carbon Coal Company, who operated the Illinois Valley Coal property until 1892, under separate management. The two properties were worked together under the same management and consolidated in 1892 under the name of the La Salle County Carbon Coal Company. That is the history of the operation, and when I saw those in 1884, they were in the hands of the Illinois Valley Coal Company.

Mr. BUTTERS: Q. Now, then, look at exhibits numbered 1 and numbered 3, and state in whose possession the lands therein described have been since the date of those deeds and the delivery of them.

Objection by the defendant.

The COURT: I think I will let him answer.

Exception by the defendant.

435 A. Number 1 has been in the possession of the La Salle County Carbon Coal Company since November, 1883, and number 3 has been in the possession of the La Salle County Carbon Coal Company since October, 1892.

Mr. BUTTERS: Q. What if anything has been done by the way of acts of possession of the lands, the surface of these lands?

Mr. CHIPERFIELD: I object to that as incompetent, irrelevant and immaterial and not tending to prove any of the issues in the case; and no proper foundation had been laid.

The COURT: I think I will let him answer.

Defendant excepts.

436 A. It was in the possession of the La Salle County Carbon Coal Company.

Answer stricken out by the court. Question re-read. Defendant renews objections.

Objection overruled; defendant excepts.

A. They have been under the management of the La Salle County Carbon Coal Company.

Mr. BUTTERS: That is all. Now, we want to offer in evidence the deeds numbers 1, 3, 4, 5, 6, 7, 8 and 9 and each of them, jointly and separately; also the acknowledgements, certificate of acknowledgement and recording thereto attached.

437 Mr. CHIPERFIELD: I want to ask each and all of the questions that have been previously asked of this witness and to offer in connection with such questions the answers previously made.

The COURT: I will treat the record that way.

Mr. CHIPERFIELD: Yes, I don't want to make any further offer.

The COURT: I understand. I will treat the record as made up that way.

Mr. CHIPERFIELD: Well, then, what is the attitude of the opposite side with reference to the offer?

Mr. BUTTERS: Same objection.

The COURT: You have objected and I sustained the objection. I let it go in before the court.

Mr. CHIPERFIELD: Yes, I understand, but I want to offer. I want to offer all of that now and I want to know if it is objected to.

Mr. BUTTERS: Well, the same objections that were made when the witness was—

438 Mr. CHIPERFIELD: Well, there is a portion of it that is not objected to at all in the original.

The COURT: The record may be repeated just as it has been to each one of these instruments.

Mr. CHIPERFIELD: Yes.

The COURT: The objections and everything else.

Mr. CHIPERFIELD: I don't make myself clear to the court. Where there was no objection I want to now offer that to the jury.

The COURT: Oh, I see.

Mr. CHIPERFIELD: If there is no objection.

The COURT: I did not understand that.

Mr. BUTTERS: I understood that was offered for the court.

Mr. CHIPERFIELD: I know, but now in the presence of the jury I am offering it.

Mr. BUTTERS: We object to it.

Mr. CHIPERFIELD: That is what I want to know. I want to know if it is objected to.

The COURT: I sustain the objection.

439 The defendant excepts.

EXHIBIT 1.

THIS INDENTURE, made this eighth day of November, in the year of our Lord, one thousand eight hundred and eighty-three (A. D. 1883) between Henry L. Young, James H. Young and Mason Young, as trustees under the last will and testament of Henry Young, deceased, of the City, County and State of New York, party of the first part and the La Salle County Carbon Coal Company, a corporation created and organized under the laws of the State of Illinois, party of the second part.

WITNESSETH, that the said party of the first part for and in consideration of the sum of three hundred thousand dollars (\$300,000) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged have and by these presents do remise, release, alien and convey unto the said party of the second part, its successors and assigns FOREVER, all those certain tracts, pieces or parcels of land situate in the County of La Salle, and State of Illinois, known and described as follows, to-wit:

All the east half (E. $\frac{1}{2}$) of section fourteen (14) in township thirty-three (33) north range one (1) East of the Third Principal Meridian, containing three hundred and four and twenty-two one hundredths (304.22/100) acres more or less together with the shaft located on said east half (E. $\frac{1}{2}$) of said section fourteen (14) known as "Carbon Shaft," and all of the appurtenances to said shaft meaning expressly to include as real estate in the word "appurtenances" all buildings, steam engines, boilers, shafting, belting and implements now standing or being in use at or in said shaft, all of which are declared to be fixtures and part of the realty, excepting
441 and reserving the rights of way over said east half (E. $\frac{1}{2}$) acquired by the Chicago and Rock Island Railroad

Company and the Illinois and Michigan Canal and also excepting and reserving that part of said East half (E. $\frac{1}{2}$) known and described as lot seven (7) in block twenty-five (25), lots twelve (12), thirteen (13), sixteen (16), and seventeen (17), in block forty-one (41), lot five (5), and twenty-two (22) feet off of lot seventeen (17) in block forty-three (43), lot two (2) in block forty-nine (49), lots five (5) in block fifty (50), and lots one (1), seven (7), twenty (20) and twenty-one (21) in block fifty-two (52) in the Town of Rockwell, said lots containing in all about two acres.

23 And all of the coal, together with the right to mine the same, under the surface of the south fraction of the northeast quarter (N. E. $\frac{1}{4}$) of section twenty-three (23), in the township and range aforesaid, lying south of the Illinois River and containing one hundred and thirteen and forty-one hundredths ($113\frac{40}{100}$) acres more or less.

24 And all of the coal, together with the right to mine the same, under the surface of the northwest fraction of the northwest quarter (N. W. $\frac{1}{4}$) of section twenty-four (24) in the township and range aforesaid, containing fifty-eight and ninety-five one hundredths ($58\frac{95}{100}$) acres more or less.

And all of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-four (24) in the township and range aforesaid, and of that part of section twenty-five (25) in the township and range aforesaid, described as follows, to-wit: commencing at the northeast corner of the northwest quarter of the southwest quarter of said section twenty-five (25); thence northeast through the northeast corner of the southeast quarter of the northwest quarter of said section twenty-five (25), a total distance of seventy and seventy one hundredths ($70\frac{70}{100}$) rods; thence southeasterly at right angles with said last mentioned line four-

25 teen and fourteen one hundredths ($14 \frac{14}{100}$) rods; thence to northeast corner of said section twenty-five (25); to thence west on the north line of said section twenty-five (25) to the northwest corner of the northeast quarter of the northwest quarter of said section twenty-five (25); thence south to the place of beginning, containing one hundred and twenty (120) acres more or less.

19 And all of the northwest quarter (N. W. $\frac{1}{4}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section nineteen (19), township thirty-three (33) north and range two (2) east of the third principal meridian, and the west four and one-quarter ($4\frac{1}{4}$) acres of the south fraction of the northwest quarter (N. W. $\frac{1}{4}$) of said section nineteen (19) in the township and range last aforesaid.

11 Also all of that portion of the east half (E. $\frac{1}{2}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section eleven (11) in township thirty-three (33) north and range one (1) east of the third principal meridian, lying north and west of the bed of the Little Vermilion River, containing forty-five (45) acres more or less, and all of that portion of the southeast (S. E.) corner of the west half (W. $\frac{1}{2}$) of said southwest quarter (S. W. $\frac{1}{4}$) of said section eleven (11) described as follows, to wit: Beginning at the southeast (S. E.) corner of the west half (W. $\frac{1}{2}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section eleven (11) in township thirty-three (33) north and range one (1) east of the third principal meridian, running thence north seven and one-half degrees ($7\frac{1}{2}$ degrees) west, eight (8) chains and ninety-eight (98) links to a point where said line intersects the right of way of the Illinois Central Railroad Company; thence south on the east line of said right of way with the curve of said railroad to the south line of said southwest quarter; thence north eighty-two and one-half degrees ($82\frac{1}{2}$ degrees), east two (2) chains and thirty-six (36) links to the place of beginning, containing

sixty-six one hundredths ($66/100$) of an acre; together with the shaft located on said southwest quarter (S. W. $\frac{1}{4}$) of said section eleven (11) known as "Kentucky Shaft," and all of the appurtenances to said shaft, meaning expressly to include as real estate in the word "appurtenances" all buildings, steam engines, boilers, shafting, belting and implements now standing or being in use at or in said shaft, all of which are declared to be fixtures and part of the realty.

- 11 And all of the coal, together with the right to mine the same, under the surface of the southeast quarter (S. E. $\frac{1}{4}$) and of the southwest quarter (S. W. $\frac{1}{4}$) and of the west half of the northwest quarter (W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$) of said section eleven (11) in the township and range aforesaid.

Also all of that portion of the southwest quarter of the southeast quarter (S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$) of section three (3), in township thirty-three (33) north and range one (1) east of the third principal meridian east of the right of way of the Illinois Central Railroad Company, described as follows, to wit: Beginning at the northeast (N. E.) corner of the southwest quarter of the southeast quarter (S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$) of section three (3) in township thirty-three (33) north, and range one (1), east of the third principal meridian; thence south eight degrees (8 degrees), east twelve and ninety-one hundredths ($12\frac{91}{100}$) chains; thence south eighty degrees (80 degrees), west three and forty-two hundredths ($3\frac{42}{100}$) chains to the east line of said right of way; thence northwesterly with the line of said right of way, to the north line of said southwest quarter of southeast quarter (S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$); thence north eighty-two and one-half degrees ($82\frac{1}{2}$ degrees), east nine and nineteen hundredths ($9\frac{19}{100}$) chains to the place of beginning, containing seven and

seventy-four one hundredths ($7\frac{74}{100}$) acres, and all of that strip of ground in the northwest quarter of the southeast quarter (N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$) of section three (3) aforesaid, to be used for a road twenty-four (24) feet wide, running parallel with the east line of the right of way of the Illinois Central Railroad Company, commencing at the northwest corner of the above described seven and seventy-four one hundredths ($7\frac{74}{100}$) acres, and running fifteen and fifty-nine one hundredths ($15\frac{59}{100}$) chains in a northwest direction to the center of the La Salle and Homer road, containing fifty-six one hundredths ($56/100$) acres.

3 And all of the coal, together with the right to mine the same, under the surface of the southeast quarter (S. E. $\frac{1}{4}$) and of the south half of the northeast quarter (S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$), and of the northeast quarter of the southwest quarter (N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$) and of the southeast quarter of the northwest quarter (S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$) of said section three, in the township and range aforesaid.

10 And all of the coal, together with the right to mine the same, under the surface of the west half of the east half of the southeast quarter (W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) and of a strip of land thirty-five (35) rods in width off the east side of the west half of the southeast quarter (W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$), containing seventy-five acres, and of the northeast quarter (N. E. $\frac{1}{4}$), except the southwest quarter of the southwest quarter (S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$) thereof, containing 150 acres, and of the north half (N. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$), and of the north twenty (20) rods of the south half (S. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$) of section ten (10), in township thirty-three (33) north and range one (1) east of the third principal meridian.

And also the shaft located on or near the southwest

quarter (S. W. $\frac{1}{4}$) of section fourteen (14), in township thirty-three (33) north, and range one (1) east of the third principal meridian, known as "La Salle Shaft," and all of the appurtenances to said shaft, meaning expressly to include as real estate in the word "appurtenances" all buildings, steam engines, boilers, shafting, belting and implements now standing or being in use at or in said shaft, all of which are declared to be fixtures, and part of the realty.

And all of the east part of the northwest quarter (N. W. $\frac{1}{4}$) of said section fourteen (14) in the township and range aforesaid conveyed or intended so to be by Samuel B. Carter to Edmund D. Taylor, by deed dated November 2, 1863, and recorded December 2, 1863, in La Salle County records, in book 88, page 424, excepting and reserving property conveyed by the Northern Illinois Coal and Iron Company of La Salle, to the Town of La Salle, and to school district No. 1, in town 33, range 1 east by deeds recorded in La Salle County records, in book 149, page 455, and book 139, page 146.

And all of the coal, together with the right to mine the same, under the surface of that part of the northwest quarter (N. W. $\frac{1}{4}$) of said section fourteen (14) in the township and range aforesaid, conveyed or intended so to be by Daniel Evans, to the Northern Illinois Coal and Iron Company of La Salle, by deed dated April 23, 1862, and recorded May 5, 1862, in La Salle County records, in book 82, page 108.

And all of the southwest fractional quarter (S. W. Fr'l $\frac{1}{4}$) of said section fourteen (14), in the township and range aforesaid, containing one hundred and forty-seven and thirty-one one hundredths ($147 \frac{31}{100}$) acres more or less, excepting therefrom an undivided sixty of six hundred and thirty-one (60-631) parts of lots described

in a deed of the sheriff of La Salle County to Edmund D. Taylor, dated the 2nd day of May, 1845, and recorded in La Salle County records, in book 16, page 512, excepting also tracts conveyed by Edmund D. Taylor or the Northern Illinois Coal and Iron Company of La Salle, prior to March 1, 1873.

And the west seventy-five (75) feet of lots numbered eleven (11), and twelve (12), in block number thirty (30) Adams addition to La Salle, subject to the right of way of the Chicago, Rock Island and Pacific Railroad Company, and to the public highway.

And the right to occupy and use the passageways, entries, air courses and stables now constructed and existing under block number thirty (30) in Adams addition to La Salle, or so much thereof as belongs to the Illinois Central Railroad Company, and under the right of way of said Illinois Central Railroad Company, east of and adjoining said block, in the City of La Salle, County of La Salle, and State of Illinois, subject, however, to the provisions and conditions of that certain Indenture executed by said company to said Henry L. Young, James H. Young and Mason Young, as trustees under the last will of Henry Young, deceased, dated May 24, 1883, and recorded in La Salle County records, in book 238, page 394.

And all of lots numbered one (1) and two (2) in block one hundred and forty-seven (147) and lots numbered one (1) and two (2), in block one hundred and forty-eight (148), in the City of La Salle.

And all of the southeast fractional quarter (S. E. Fr'l $\frac{1}{4}$) and the southwest fractional quarter (S. W. Fr'l $\frac{1}{4}$), and the south fractional half (S. Fr'l $\frac{1}{2}$) of the north half (N. $\frac{1}{2}$) and the north fractional half (N. Fr'l $\frac{1}{2}$) of the northeast quarter (N. E. $\frac{1}{4}$) of section twenty-one (21), in township thirty-three (33) north and range one (1) east of the third principal meridian.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances and fixtures, *to have and to hold* the said premises above described, with the appurtenances, unto the said party of the second part, its successors and assigns forever.—

And the said Henry L. Young, James H. Young and Mason Young, as trustees under the last will and testament of Henry Young, deceased, for themselves, their successors and assigns, do covenant, promise and agree to and with said party of the second part, its successors and assigns, that they have not done or suffered to be done anything whereby the said premises above described are or may be in any manner encumbered or charged, and that the said premises against all persons lawfully claiming or to claim the same, by, through, or under them they will *warrant and forever defend*.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Witness

HENRY A. JAMES.

HENRY L. YOUNG, *Trustee*. [SEAL.]

JAMES H. YOUNG, *Trustee*. [SEAL.]

MASON YOUNG, *Trustee*. [SEAL.]

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.
 CITY OF NEW YORK. }

I, Henry A. James, a notary public in and for the said city and county, in the state aforesaid, do hereby certify that Henry L. Young, James H. Young and Mason Young, trustees under the last will and testament of Henry Young deceased who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act as such trustees for the uses and purposes therein set forth.

Given under my hand and notarial seal this sixteenth day of November, A. D. 1883.

[SEAL.]

HENRY A. JAMES,
Notary Public,
 New York County.

Which said paper is endorsed upon the back thereof as follows:

“The trustees under the will of Henry Young to the La Salle County Carbon Coal Company. Deed. Edward C. Mason, Henry B. Mason, Alfred Bishop Mason, counsellors-at-law, Chicago.”

(ALSO) “\$300,000 November 8, '83. State of Illinois, La Salle County, ss. No. 31524. This instrument was filed for record this 5th day of December, A. D. 1883, at 3½ o'clock P. M., and is duly recorded in book 229 of records, page 61. Stephen Arnold, Recorder.”

EXHIBIT 3.

THIS INDENTURE, made this 1st day of October, in the year of our Lord One Thousand Eight Hundred and Ninety-Two, between the Illinois Valley Coal Company of La Salle County and State of Illinois party of the first part, and The La Salle County Carbon Coal Company party of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of One Hundred and Forty-three Thousand (\$143,000.) Dollars and other valuable consideration to it in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, alien and confirm unto the party of the second part, and to its successors and assigns, forever, all those certain pieces or parcels of land, situate, lying and being in the County of La Salle, State of Illinois, known and described as follows to-wit:

All its real estate, lands, tenements and coal property of every kind or sort, consisting of lands with coal under them and of coal underlying other lands and coal shafts, railway tracks thereon in the township numbered Thirty-three (33) North of Range One (1) East of the Third Principal Meridian in the State of Illinois, all of said lands and coal being in the County of La Salle in the said state, for a particular description of which reference is made to the following described deeds conveying titles to the said Illinois Valley Coal Company, viz.: a deed of Charles G. Wicker and wife to said company dated March 27, A. D. 1870, and recorded the 30th day of April, A. D. 1870. Also a deed from said Wicker and wife to said company dated December 5, 1881, and recorded the 14th day of same month. Also a deed from the said Wicker and wife

dated March 1, 1884, and recorded on the 28th day of the same month, all in the records of the said La Salle County. Also two deeds of Horace White and wife, each dated the twentieth day of March, A. D. 1865, and both recorded in said recorder's office on the 13th day of May, A. D. 1865. Also a deed of Margaret Evans, dated the 9th day of June, A. D. 1884, and recorded on the 28th day of March, A. D. 1885, in same office.

Also a deed of Henry C. Freeman and wife, dated November 16, A. D. 1871, and recorded on the 31st day of May, A. D. 1872. A deed from Mary Ann Leonard, dated April 25, A. D. 1870, and recorded June 20th, of same year.

A deed of Morris Neustadt and wife, dated June 9, 1870, and recorded July 20th, of same year. A deed of Lyne S. Whitmore, dated March 1, 1872, and recorded May 31st, same year. A deed of Lester Dolley and wife, dated March 4, 1865, and recorded May 13th, same year. Also a deed of Rachel Neustadt, Morris Neustadt, Byron Watson and others, dated June 2, 1870, and recorded July 20th, same year. Also a deed of Hiram Holmes and wife and Horace Holmes and others dated March 28, 1887, and recorded April 14, 1890. Also a deed of Emeline E. Snow and George W. Snow, dated July 7, 1870, and recorded September 3, 1870.

Also a deed of William Chumasero and Amos D. Brown, executors, dated May 13, 1870, and recorded June 20, 1870.

All of said records being the records of La Salle County, Illinois. Also a deed of J. D. Caton and his wife dated June 10, 1892, and recorded August 23, 1892.

Also the East Half of the Southeast Quarter of Section Twenty-six (26) in the Township Thirty-three (33) North of Range One (1) east of the Third Principal Meridian,

State of Illinois, deed by certain heirs at law, each one-tenth and recorded the 19th day of October, 1891.

And the said first party agrees also that if by possibility there shall be any error or defect in the description of the property hereby intended to be described and conveyed which it is understood is all the property of every nature and kind belonging to the said first party, in said township or said County of La Salle, it will at any time on request make the conveyance perfect and correct such error.

IN WITNESS WHEREOF, the Illinois Valley Coal Company has caused this deed to be executed by the proper officers and the seal of the respective company to be here-to affixed and attested.

(Signed.) ALLEN SHELDON,
Vice President Illinois Valley Coal Company.

WITNESS:

JAMES G. MILLER,

JAMES JOY.

[SEAL.]

ATTEST:

F. O. WYATT,
Secretary.

STATE OF MICHIGAN, }
COUNTY OF WAYNE. } ss.

On this 14th day of October, A. D. 1892, before me, a notary public in and for said county, personally came the above named Allan Sheldon, vice president, known to me to be the person named in and who executed the above instrument, and acknowledged that he executed the same for the intents and purposes therein named.

(Signed.) JAMES G. MILLER,
Notary Public in and for Wayne County, Michigan.

[SEAL.]

(Attached to which is the following slip) :

STATE OF MICHIGAN, }
COUNTY OF WAYNE. } ss.

I, William May, clerk of said county, and clerk of the Circuit Court for the County of Wayne, which is a court of record, having a seal, do hereby certify, that James G. Miller, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument and therein written, was, at the time of taking such proof or acknowledgment, a notary public in and for said county, duly commissioned and qualified, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court and county, at Detroit, this 14th day of October, A. D. 1892.

(Signed.) WM. MAY, *Clerk.*

By SAMUEL STEWARD, *Deputy Clerk.*

[SEAL.]

(On the back appears the following) :

Illinois Valley Coal Company to La Salle County Carbon Coal Company.

\$143,000.

Oct. 1, '92.

STATE OF ILLINOIS, }
LA SALLE COUNTY, } ss. No. 41,316

THIS INSTRUMENT was filed for record this 20th day of October, A. D. 1892, at eight o'clock A. M., and is duly recorded in book 306 of records, page 7.

STEPHEN ARNOLD,
Recorder.

EXHIBIT "4."

"THIS INDENTURE, made this twentieth day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty-five between Horace White & Martha H. White, his wife, of the City of Chicago, County of Cook & State of Illinois, party of the first part, and the Illinois Valley Coal Company, a corporation created by an act of the Legislature of the State of Illinois, approved February 15, 1865, party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Eight Thousand (\$8,000) Dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part, and to their heirs and assigns forever all the following described lot, piece, or parcel of land, situate in the County of La Salle and State of Illinois and known and described as follows, to-wit:

An undivided one-half ($\frac{1}{2}$) of the Southwest quarter ($\frac{1}{4}$) of Section number twenty-four (24) in Township number thirty-three (33) of Range number one (1) East of the Third (3rd) Principal Meridian, containing eighty (80) acres of land more or less. TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: And all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and

appurtenances. To HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the said party of the second part, their heirs and assigns FOREVER.

And the said Horace White & Martha H. White, party of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain and agree, to and with the said party of the second part, their heirs and assigns, that at the time of the ensealing and delivering of these presents, they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple: And have good right, full power, and lawful authority to grant, bargain, sell and convey the same, in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind and nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part their heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will WARRANT AND FOREVER DEFEND.

And the said Horace White & Martha H. White, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of Homesteads from sale on execution or otherwise, and especially under the Act entitled, "An Act to Exempt Homesteads from sale on execution, passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an Act entitled, "An Act to amend an Act entitled, 'An Act to Exempt Homesteads from sale on

execution' ” passed by said Assembly, A. D. 1857, and approved February 17, A. D. 1857.

IN WITNESS WHEREOF, the said party of the first part do hereunto set their hands and seals the day and year first above written.

HORACE WHITE, [SEAL.]

MARTHA H. WHITE. [SEAL.]

Interlineation in third line made before execution.

J. LEWIS LEE,

Notary Public.

(Revenue stamps). ”

“STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.
CITY OF CHICAGO. }

I, J. Lewis Lee, a notary public in and for the City of Chicago in and for said county, in the State aforesaid, do hereby certify, That Horace White and Martha H. White, personally known to me to be the same persons whose names are subscribed to the foregoing WARRANTY DEED, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth.

And the said Martha H. White, wife of the said Horace White, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her acknowledge that she had freely and voluntarily executed the same, and relinquished her dower, and all right, title and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all ‘Homestead

Exemption Laws,' so called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twentieth day of March, A. D. 1865.

J. LEWIS LEE,
Notary Public."

(J. LEWIS LEE,)
(*Notary Public,*)
(City of Chicago.)

On the back of the foregoing instrument appears the following:

“WARRANTY DEED.

from

Horace White

&

Martha H. White

to

The Illinois Valley Coal Company.

STATE OF ILLINOIS, }
LA SALLE COUNTY, } No. 1728.

THIS INSTRUMENT was filed for record on the 13th day of May, A. D. 1865, at the hour of 8½ o'clock A. M. and duly recorded in book 102 of deeds at page 215.

H. SILVER,
Clerk of Circuit Court and Ex-Officio Recorder."

EXHIBIT 5.

(Warranty Deed.—Printed and for sale at Tribune Office, 51 Clark Street, Chicago.)

THIS INDENTURE, Made this twentieth day of March in the year of our Lord One Thousand Eight Hundred and Sixty-five between Martha H. White, late Martha H. Root, wife of Horace White, and Horace White, of the City of

Chicago, County of Cook and State of Illinois, party of the first part, & the Illinois Valley Coal Company, a corporation created by act of the Legislature of the State of Illinois approved February 15, 1865, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of eight thousand (\$8,000) dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part, and to their heirs and assigns forever, all the following described lot, piece, or parcel of land, situate in the County of La Salle and State of Illinois, and known and described as follows, to-wit:

An undivided one-half ($\frac{1}{2}$) of the Southwest Quarter ($\frac{1}{4}$) of Section Number Twenty-four (24) in Township Number Thirty-three (33) of Range Number One (1) East of the Third (3rd) Principal Meridian, containing eighty (80) acres of land more or less.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances. TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the said party of the second part, their heirs and assigns forever.

And the said Martha H. White and Horace White, party of the first part, for their heirs, executors and administrators, do covenant, grant, bargain and agree, to and with the said party of the second part, their heirs and assigns, that at the time of the ensealing and delivering of these presents, they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple: And have good right, full power, and lawful authority to grant, bargain, sell and convey the same, in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind and nature soever; And the above bargained premises, in the quiet and peaceable possession of the said party of the second part, their heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will WARRANT AND FOREVER DEFEND.

And the said Martha H. White and Horace White, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled, "An Act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled, "An Act to amend an act entitled, 'An Act to exempt homesteads from sale on execution,'" passed by said Assembly, A. D. 1857, and approved February 17, A. D. 1857.

IN WITNESS WHEREOF, the said party of the first part

do hereunto set their hands and seals the day and year above written.

MARTHA H. WHITE, [SEAL.]

HORACE WHITE. [SEAL.]

Interlineation in third line made before execution.

REVENUE STAMP.

Of Deed, Instrument or Writing whereby lands, tenements, or other realty shall be conveyed, the value of which does not ex- ceed \$500	\$.50
From \$500 to \$1,000.....	1.00
Every additional \$500 or fractional part...	.50
(Revenue Stamps)	
8c	

(On the back appears the following) :

STATE OF ILLINOIS,	} ss.
COOK COUNTY,	
CITY OF CHICAGO.	

I, J. Lewis Lee, a notary public in and for the City of Chicago in and for said county, in the State aforesaid, do hereby certify, that Horace White and Martha H. White, who are personally known to me to be the same persons whose names are subscribed to the foregoing warranty deed, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth.

And the said Martha H. White, wife of the said Horace White, having been by me examined separate and apart, and out of the hearing of her said husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and

relinquished her dower, and all right, title and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all Homestead Exemption Laws, so-called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twentieth day of March, A. D. 1865.

J. LEWIS LEE,
Notary Public.

[SEAL.]

WARRANTY DEED.

From
Martha H. White
and
Horace White
to

The Illinois Valley Coal Company.

STATE OF ILLINOIS, }
LA SALLE COUNTY. } No. 1727

This instrument was filed for record on the 13th day of May, A. D. 1865, at the hour of 8½ o'clock A. M., and duly recorded in book 103 of deeds, etc., at pages 8, 9 and 10.

H. SILVER,
Clerk of Circuit Court and ex-Officio Recorder.

EXHIBIT 6.

THIS INDENTURE WITNESSETH That the Grantors, CHARLES G. WICKER and ELIZABETH J. WICKER, his wife, of the City of Chicago, in the County of Cook and State of Illinois, for the consideration of Five Dollars, convey and quitclaim to the ILLINOIS VALLEY COAL COMPANY, a corporation organized and existing under and by virtue

of the laws of the State of Illinois, all interest in the following described real estate, to-wit: the Southeast fractional quarter of Section Twenty-two (22), Town. Thirty-three (33) North, Range One (1) East of the Third Principal Meridian, said quarter section including the Illinois River passing through it, containing one hundred and sixty acres, more or less.

Also, all of the West three-quarters of the Southwest Quarter of Section Twenty-three (23) in said Town. Thirty-three (33), containing one hundred and twenty (120) acres, more or less; also, all the coal and coal mines and all other mines and minerals which are situate on or may be found in, under or upon the East Half of the Northeast Quarter of the Southwest Quarter of said Section Twenty-three (23), containing twenty (20) acres, more or less, together with all mining rights and privileges, necessary to mine, dig, raise and remove said coal or other minerals from said premises and all the occupation and use of said premises convenient and necessary in and while so doing and also all right to the surface of the said premises except so far as the same has heretofore been conveyed by Charles Todd to the Illinois Central Railroad; also, all that part of the Northwest Fractional Quarter of said Section Twenty-three (23) situate south of the Illinois River and westerly of the line of the Illinois Central Railroad, and containing about twenty acres more or less, and including all privileges and mining rights beneath said Illinois River and said Illinois Central Railway pertaining or belonging thereto.

Also, all of the Northeast Quarter of the Northeast Quarter of Section Twenty-seven (27) in said Town. Thirty-three (33), containing forty (40) acres more or less; excepting and reserving nevertheless from this conveyance, the interest in that portion of the Southeast

Quarter of Section Twenty-two (22) lying northerly of the Illinois River heretofore conveyed by William B. Ogden to Harriet Brown, hereby conveying to the said Illinois Valley Coal Company all the rights and interests therein not so conveyed by said Ogden to said Harriet Brown, to-wit: the right to mine coal and other minerals on and beneath said premises and to occupy the same as may be necessary while so doing, all said real estate being situated in the County of La Salle in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this state.

Dated this first day of March, A. D. 1884.

(Signed.) CHARLES G. WICKER, [SEAL.]

(Signed.) ELIZABETH J. WICKER, [SEAL.]

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Frank J. Loesch, a notary public in and for said county in the state aforesaid, do hereby certify that Charles G. Wicker and Elizabeth J. Wicker, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this second day of July, A. D. 1884.

FRANK J. LOESCH,
Notary Public.

[SEAL.]

(On the back appears the following) :

S. E. fr. $\frac{1}{4}$ 22, 33, 1	) 20 a. pt N. W. fr $\frac{1}{4}$ 23,
W. $\frac{3}{4}$, S. W. $\frac{1}{4}$, 23, 33, 1	) 33, 1
E. $\frac{1}{2}$, N. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$, 23, 33, 1	) N. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$, 27,
	33, 1

QUITCLAIM DEED.

Charles G. Wicker and Wife

to

Illinois Valley Coal Company.

Mch. 1, '84.

\$5.

STATE OF ILLINOIS, { ss. No. 1446
LA SALLE COUNTY.

This instrument was filed for record this 28th day of March, A. D. 1885, at 2 $\frac{3}{4}$ o'clock P. M., and is duly recorded in book 246 of records, page 224.

STEPHEN ARNOLD,
Recorder.

EXHIBIT 7.

THIS INDENTURE, Made this 4th day of March in the year of our Lord One Thounsand Eight Hundred and Sixty-five Between Lester Dolley and wife Sarah R. A. Dolley, party of the first part, and the Illinois Valley Coal Company, a corporation created by Act of the Legislature of the State of Illinois approved February 15, 1865, party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Sixteen Thousand Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have aliened,

remised, released, conveyed and confirmed, and by these presents, do alien, remise, release, convey and confirm unto the said party of the second part, and their heirs and assigns forever, all the Southeast quarter of Section twenty-three (23), in Township Thirty-three (33) North of Range No. One (1) East of the Third Principal Meridian, (Excepting the right of way through said Section previously conveyed to the Illinois Central Railroad Company comprising about fifteen acres in the west part of said quarter Section), and also, the right of way over the North part of the West half of the Northeast quarter of Section twenty-six, Town. thirty-three (33) north of Range one East of 3rd Principal Meridian to connect said tract with the Illinois Central Railroad, provided the land occupied shall not be more than thirty feet in width, and of a length sufficient to reach the railroad by the shortest practicable route from the north line of said southeast quarter of Section twenty-three (23) above described. TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, their heirs and assigns forever.

And the said Lester Dolley and Sarah R. A. Dolley, for their heirs, executors and administrators, do hereby covenant, promise and agree, to and with the said party of the second part, their heirs and assigns, that they have not made. done, committed, executed or suffered any act

or acts, thing or things whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered, in any manner, or way whatsoever, and that they are well seized of the premises above conveyed, have good right to sell and convey the same, that they are free from all incumbrances, and that the above bargained premises, in the quiet and peaceable possession of the second party, their heirs and assigns, they will forever warrant and defend.

IN WITNESS WHEREOF, the said party of the first part hereunto set their hand and seals the day and year first above written.

LESTER DOLLEY, [SEAL.]

SARAH R. A. DOLLEY. [SEAL.]

The words town thirty-three North of Range One East of 3d Principal Meridian, above line No. 19 were interlined before acknowledgment.

SIGNED, SEALED AND DELIVERED in presence of P. W. Handy.

(U. S. Inter. Revenue Stamp, \$10)

(U. S. Inter. Revenue Stamp, \$1)

(U. S. Inter. Revenue Stamp, \$5)

STATE OF NEW YORK, }
MONROE COUNTY. } ss.

I, P. W. Handy, notary public in and for said county in the state aforesaid, do hereby certify that Lester Dolley and Sarah R. A. Dolley, personally known to me to be the same persons whose names are subscribed to the foregoing warranty deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free

and voluntary act, for the uses and purposes therein set forth.

And the said Sarah R. A. Dolley, wife of the said Lester Dolley, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower, and all right, title and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this eighth day of March, A. D. 1865.

P. W. HANDY,
Notary Public.

[SEAL.]

(Inter. Revenue Stamp, 5c.)

Which said paper is endorsed upon the back thereof as follows:

“Warranty Deed. From Lester Dolley and wife Sarah A. Dolley to Illinois Valley Coal Company. Use of.”

(Also) “State of Illinois, La Salle County. No. 1726. This instrument was filed for Record on the 13th day of May, A. D. 1865, at the hour of 8½ o’clock A. M. and duly recorded in Book 102 of Deeds at page 213. H. Silver, Clerk of Circuit Court and Ex-Officio Recorder.”

(Also) “Mail J. T. Ryerson Secty Ills Valley Coal Co. Chicago.”

(Also) “Tribune Print, 51 Clark Street, Chicago.”

476-483

EXHIBIT "8."

"This indenture, made the second day of June, in the year of our Lord One Thousand Eight Hundred and Seventy between Rachel L. Neustadt, and Morris Neustadt her husband, Byron Watson and Laura Watson, his wife, Emeline Snow, and George W. Snow her husband, party of the first part, and the Illinois Valley Coal Company, party of the second part,

Witnesseth, that the said party of the first part, for and in consideration of Eight Hundred Dollars in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have Remised, Released, Sold, Conveyed and Quit-Claimed, and by these presents do Remise, Release, Sell, Convey and Quit-Claim, unto the said party of the second part, their heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part have in and to the following described Lot, piece or parcel of land, to-wit:

The East half, of the Southeast quarter, of the Southwest quarter of Section numbered twenty-three (23), Township thirty-three (33), Range No. one (1) East of the Third Principal Meridian, containing twenty acres more or less, subject to the right-of-way over the same, of the Illinois Central Railroad Company, as appears of record heretofore granted.

The party of the first part reserve the right to quarry stone, and remove the same, from said tract of land by teams or otherwise, also the right to lay a track from the Illinois Central Railroad track to the quarry, for the removal of said stone.

These reservations are made for the benefit of George W. Snow, Rachel L. Neustadt and Morris Neustadt, her

husband, and Emeline E. Snow, wife of G. W. Snow, and shall continue only during their lifetime.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever.

And the said Rachel L. Neustadt, formerly Rachel Watson, Morris Neustadt, Byron and Laura Watson, Emeline and George W. Snow, party of the first part, hereby expressly waive, reseal and relinquish unto the said party of the second part, their heirs, executors, administrators and assigns, all right, title, claim, interest and benefit whatever, in and to the above demised premises, and each and every part thereof, which is given by or results from all laws of this state pertaining to the Exemption of Homesteads.

And the said party of the first part, for themselves and their heirs, executors and administrators, do covenant, promise and agree, to and with the said party of the second part, their heirs, executors, administrators and assigns, that they have not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered, in any way or manner whatsoever other than described as above.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in presence of

RACHEL L. NEUSTADT.	[SEAL.]
EMELINE E. SNOW.	[SEAL.]
MORRIS NEUSTADT.	[SEAL.]
BYRON NEUSTADT.	[SEAL.]
LAURA WATSON.	[SEAL.]
GEORGE W. SNOW.	[SEAL.]

(Revenue Stamp.)

STATE OF ILLINOIS, }
LA SALLE COUNTY. } ss.

I, the undersigned, a Justice of the Peace in and for said County, and the State aforesaid, do hereby certify that Rachel Neustadt and Morris Neustadt her husband, personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day, in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Rachel Neustadt, wife of the said Morris Neustadt, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this state relating to the exemption of Homesteads, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 20th day of June, A. D. 1870.

JOHN FORRISTAL, *J. P.*”

(Attached to the foregoing instrument are the following documents:)

“STATE OF ILLINOIS, }
WOODFORD COUNTY. } ss.

I, M. L. Newell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Emeline E. Snow and George W. Snow, her husband, who are personally known to me to be the same persons whose names are subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that they had signed, sealed, and delivered the said instrument of writing as their free act and deed for the uses and purposes therein expressed.

Given under my hand and Notarial Seal this 21st day of June, A. D. 1860.

M. L. NEWELL,
Notary Public.”

(M. L. Newell,)
(Notary)
(Public,)
(Minonk, Woodford Co. Ill.)

“STATE OF ILLINOIS, }
LEE COUNTY. } ss.

I, Simon Badger, a Justice of the Peace, in and for said County, and the State aforesaid, do hereby certify, that Byron Watson and Laura B. Watson, personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writ-

ing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Laura B. Watson, wife of the said Byron Watson, having been by me examined separate and apart, and out of hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her and she also by me being fully informed of her rights under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of Homesteads, without the compulsion of her husband, and that she does not wish to retract the same.

Given under my hand and seal this 20th day of June, A. D. 1870.

SIMON BADGER, *J. P.* [SEAL.]

“STATE OF ILLINOIS, }
LEE COUNTY. } ss.

I, James M. Hawley, Clerk of the County Court of said County, do hereby certify that Simon Badger, Esquire, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was, at the time of making such proof or acknowledgment, a Justice of the Peace in and for said County, duly commissioned, sworn and acting as such, and authorized to make the same; and further, that I am well acquainted with hand writing, and verily believe that the signature to the said proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court. Done at my office, in the City of Dixon, in said County, this 20th day of June, A. D. 1870.

JAMES A. HAWLEY,
Clerk County Court.”

(On the back of the foregoing instrument appears the following:)

“Quit-Claim Deed.

Rachel L. Neustadt
Emeline Snow and others
to
Illinois Valley Coal Co.
June 2, 1870.

STATE OF ILLINOIS, }
LA SALLE COUNTY. } ss. 2176.

The within Deed was filed for record in the Recorder's office of La Salle County, on the 20th day of July, A. D. 1870, at 12 o'clock M., and duly recorded in Book 134 of Deeds, on page 626.

C. H. Hook,
Recorder of La Salle County.”

483

EXHIBIT 9.

This indenture, made the Ninth day of June in the year of our Lord One Thousand Eight Hundred and Seventy between Morris Neustadt and Rachel L. Neustadt his wife, party of the first part, and the Illinois Valley Coal Company, party of the second part, witnesseth, that the said party of the first part, for and in consideration of Fifty Dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed and quit-claimed, and by these premises do remise, release, sell, convey and quit-claim unto the said party of the second part, their heirs and assigns forever, all the right, title, interest, claim and demand, which the said party of the first part has in and to the following described lot, piece or parcel of land, to-wit:

The East half of North East Quarter of South West Quarter of Section No. Twenty three (23) Township Thirty three (33) Range One (1) East of the third principal Meridian Containing Seventeen acres, more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever.

In Witness Whereof, the said party of the first part hereunto set their hands and seals the day and year above written.

Signed, Sealed and Delivered in Presence of

MORRIS NEUSTADT. [SEAL.]

RACHEL L. NEUSTADT. [SEAL.]

(Which said quit-claim deed is endorsed upon the face thereof with a \$.50 United States Inter. Revenue Stamp.)

(Which said quit-claim deed is endorsed upon the back thereof as follows:)

“STATE OF ILLINOIS, }
LA SALLÉ COUNTY. } ss.

I, The undersigned, a Justice of the Peace in and for said County, and the State aforesaid, do hereby certify, that Morris Neustadt and Rachel Neustadt, his wife, are personally known to me as the same persons whose names subscribed to the foregoing instrument of writing, appeared before me this day, in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Rachel Neustadt, wife of the said Morris

Neustadt, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her and she also by me being fully informed of her rights under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of Homesteads, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 9th day of June, A. D. 1870.

JOHN FORRISTAL, J. P."

(Also) "C Quit-claim Deed. Morris Neustadt and wife to Illinois Valley Coal Co. June 9, 1870."

(Also, in pencil) "Mail Ill Valley Coal Co Oglesby Ills"

(Also) "State of Illinois La Salle County. No. 2175. This instrument was filed for record on the 20th day of July, A. D. 1870, at 12 o'clock M., and duly recorded in Book 138 of Records at page 25. C. H. Hook, Clerk of Circuit Court and Ex-Officio Recorder."

(Also) "Culver, Page & Hoyne, Stationers, Chicago."

487 *Cross-Examination of the Witness Howard S. Hazen by Mr. Chipperfield.*

I am the general manager of the La Salle County Carbon Coal Company. This company was organized in 1883, in November, under charter from the State of Illinois. I have that charter at the present time.

Mr. CHIPERFIELD: I will ask you to introduce it, if you please, before the jury.

Mr. O'CONOR: You mean you want it?

Mr. CHIPERFIELD: Yes, I want to offer it. I want to offer this charter in evidence, if your Honor please, in connection with the testimony of this witness.

Mr. BUTTERS: Well, I object to it.

The COURT: I think I will sustain the objection.

To which ruling of the court the defendant by its counsel then and there duly excepted.

488 Mr. CHIPERFIELD: Now, you have marked that as Exhibit 2 for the purpose of identification.

Q. You are operating under this charter of which you have spoken, marked Exhibit 2? A. Yes, sir.

The works are located in the vicinity of Peru and La Salle, the coal mines.

Mr. CHIPERFIELD: Q. How many?

Objection by the plaintiff.

489 A. Four.

Mr. CHIPERFIELD: Q. Describe the location, and as you describe the location describe the designation of each.

490 Objected to by the plaintiff; objection sustained; defendant excepts.

491 I am familiar with the lands described in the plaintiff's declaration. I know the lands we own. I have never seen the declaration. I don't know what lands are included in the declaration. I am familiar with the description of the lands.

492 With reference to the lands described in the declaration, I am familiar with those descriptions. I recognize
495 the description of each one of them as you read them. We have no works located on any of these lands. We have no coal mines or shafts upon any of those lands.

We have entries and roadways underneath these lands; underneath the ground, we have. In the lands that you
 496 read the description of there are entries and roadways. We are working coal from some portions of these lands. We are working coal in the southwest quarter of Section 23, a portion of it, and that portion of 21 of the northeast quarter of 21 east of the Illinois Central Railroad.

497 We have removed portions of the coal but not in all of it. We have removed coal under the southeast and southwest quarters of 14; practically all of it except on the east edge. I cannot give you the entire amount there. A portion under the south half of 23; a small portion under the part of 21 east of the Illinois Central Railway, of the northeast quarter; that is all. The rest of the coal is within the land. The La Salle County Carbon Coal Company, the plaintiff in this case, has removed
 498 that coal. We have removed about 1,300 acres of coal.

Mr. CHIPERFIELD: Q. In the description which I read to you in this declaration, and which you said you recognized the land of which you had been in possession, how many acres are described?

A. I heard you say this morning 900 to 1,000.

499 From the lands of which a description has been read I should say we mined out in the south half of Section 23 probably twenty-five acres. I should judge twenty-five acres. And in that part of 21, the northeast quarter, east of the Illinois Central, I should say probably fifteen acres.

Q. Then of this nine or ten hundred acres, whichever it may transpire to be, you have taken out something like about forty acres altogether; is that all? A. Well, I would like to look at the map of the property before giving that answer.

500 Mr. O'CONOR: We have a map, Mr. Chiperfield, which

shows the coal mined, but it also shows a good many other things. * * * For the purpose of answering this question I can let Mr. Hazen take that and he can describe to you just where that coal was taken from. (Map is handed to the witness.)

Mr. CHIPERFIELD: Now, then, Mr. Hazen, so you may understand my question, when you are looking at the map, from the land that is involved in this suit, about how much coal has been taken and where has it been taken? Now, you may take all the time you want to answer that. I mean how many acres?

501 A. I should say fifteen acres out of that piece.

Out of the portion of the northeast quarter east of the Illinois River and north of the bayou; perhaps that would be the description. None of the coal has been removed on the balance of Section 21 across the river west. I don't know that any of the coal has been removed from the lands on the bayou; between that and the river. On Section 21 about fifteen acres has been removed, north of the bayou. The thickness of the vein is three and a half feet. I should say fifteen acres has been removed out of the south half of Section 23. Out of the lands
 502 involved in this suit about thirty acres have been mined altogether; on 14, about 120 acres have been removed; no other coal has been removed from the lands in controversy in this suit. The map correctly portrays what
 503 work has been carried on in this land. The land which was described in Exhibits 4, 5, 6, 7, 8 and 9 were in the possession of the Illinois Valley Coal Company from '84 to '92. The La Salle County Carbon Coal Company did not own the stock of the Illinois Valley Coal Company.

504 Q. Did the stockholders of the La Salle County Carbon Coal Company also own the stock of the Illinois Valley Coal Company? A. Yes, sir.

Mr. O'CONOR: Objected to as immaterial.

Objection sustained by the court; defendant excepts.

Mr. CHIPERFIELD: I want to offer to prove that from '84 to '92 the stockholders of the La Salle County Carbon Coal Company were the owners of the stock of the Illinois Valley Coal Company, and that the management, operation and control of the Illinois Valley Coal Company were the same as the management, operation and control of the La Salle County Carbon Coal Company. I think that is all.

Objected to by the plaintiff as immaterial; objection sustained; defendant excepts.

505 Mr. CHIPERFIELD: I want to ask this question:

Q. Were the officers of the Illinois Valley Coal Company and the officers of the La Salle County Carbon Coal Company identical?

Plaintiff objects; objection sustained; defendant excepts.

Mr. CHIPERFIELD: Q. I want to ask you if you took the lands which are described in the deeds which I have mentioned to you, the exhibits from 4 to 9, for any debt which was due from the Illinois Coal Company to the La Salle County Carbon Coal Company?

Objected to by the plaintiff; objection sustained; defendant excepts.

506 The jury is withdrawn from the court room.

Mr. CHIPERFIELD: I want to offer to show that the La Salle County Carbon Coal Company took the lands described in the deeds, so far as the same pertain to this suit, for an indebtedness which the Illinois Valley Coal Company owed the La Salle County Carbon Coal Company.

Objection by the plaintiff; objection sustained; defendant excepts.

507 Mr. CHIPERFIELD: There are two or three matters on that proposition that can be disposed of while the jury is absent.

The COURT: Very well.

Mr. CHIPERFIELD: Q. Did the La Salle County Carbon Coal Company require for its purpose of mining the surface of the lands which are described in the plaintiff's declaration, all of the surface of the lands which are described in the plaintiff's declaration?

Objected to by the plaintiff as not a pertinent inquiry; objection sustained; defendant excepts.

508-510 Argument upon the question of the materiality of the testimony offered.

Mr. O'CONOR: We object to it.

The COURT: I think I will sustain the objection.

Defendant excepts.

Mr. CHIPERFIELD: Q. I want to inquire how much of this land, or the surface of this land, is in fact occupied for any purpose in connection with the operation of the mines of the La Salle County Carbon Coal Company by shafts, tipples or any other purpose whatsoever that is necessarily connected with such use?

A. About twenty acres.

511 Q. What is done with the rest of the land? A. Farmed.

Q. So, aside from some twenty acres of land, the La Salle Carbon Coal Company is and has been, since it acquired these lands, engaged in the business of farming?

A. We farm the lands.

Q. I say, since it has acquired these lands, that has been the use that has been made of it? A. Yes, sir.

(The jury returns to the jury box.)

The Illinois Valley Coal Company is not now in exist-

ence. It has been consolidated in 1892 with the La Salle County Carbon Coal Company. I first learned of Exhibits 4, 5, 6, 7, 8 and 9 prior to 1884. I was connected with the Illinois Valley Coal Company as chief clerk. I worked for the Illinois Valley Coal Company from 1880 to 1884. I afterwards worked for the Illinois Valley Coal Company as treasurer from '84 to '92. I was also connected with the La Salle County Carbon Coal Company at that time in the same position.

513 I was treasurer of both companies. I was familiar with the records of the Illinois Valley Coal Company. These deeds constituted a portion of the records of the Illinois Valley Coal Company. I was present when part of the negotiations and I saw the deeds handled there and handled them myself. I knew that Exhibit 9 was in the office at that time. I knew nothing about. I am mistaken in saying I participated in the execution of these deeds. No, I think they were executed prior to '84. I
514 don't know anything about the execution of any of these deeds. All I know is that I found them in the office of the Illinois Valley Coal Company. They did not continue there. They went to Chicago, to the general manager's office. They went in 1884. They remained in the general manager's office until last November, a year ago, November, 1911; the manager's office of the La Salle County Carbon Coal Company or in the Illinois Trust and Savings Bank deposit; one or the other. I had access to the files of the general manager's office in Chicago. These deeds were kept in his office until the last three or four years, and then were put over in the Illinois Trust and Savings Bank in the custody of Mr. Wyatt. They were in the safety deposit box which the
515 La Salle County Carbon Coal Company rented in the name of Mr. Wyatt. Mr. Wyatt was the general manager of the La Salle County Carbon Coal Company. He

was my predecessor. He died last November, a year ago. I succeeded to his duties at the same time. I got these deeds in my possession April of this year. Between '92, down to the time I last saw these deeds, I had seen them several times; three or four times; I can't give you the dates. Exhibit No. 3, deed from the Illinois Valley Coal Company to the La Salle County Carbon Coal Company, 516 was made in 1884, March. I was not present at the execution of that deed and don't know anything about it. I first saw the deed some time subsequent to 1892. The first time I could swear to it was last April. I have seen it several times since, but I can't give the dates.

Q. Have you in your custody or possession any of the records of the Illinois Valley Coal Company?

Objected to by the plaintiff; objection sustained; defendant excepts.

517 Q. Do you know whether or not the premises which are described in Exhibit 3 were taken for a debt by the La Salle County Carbon Coal Company due from the Illinois Valley Coal Company?

Objected to by the plaintiff; objection sustained; defendant excepts.

518 The lands conveyed by the deed of the Illinois Valley Coal Company to the La Salle County Carbon Coal Company—that is the part described in this declaration—that deed, as I remember, conveys the lands through former deeds, reciting the parties to the transaction and 519 the book in which they are filed. All of the lands embraced in this suit there was conveyed by the deed from the Illinois Valley Coal Company to the La Salle County Carbon Coal Company, the land in Section 23, about thirty-five acres in 24, and seventy and 21/100 acres in 23; all the property of the Illinois Valley Coal Company. There was a shaft embraced in that, and works. The shaft and works are now located on Section 23, southern

edge. They are used in connection with these lands at the present time.

Court adjourns until 1 o'clock P. M., November 12, 1912.

521 *Cross-Examination of Howard S. Hazen (Continued).*

The officers of the La Salle Carbon Coal Company are Richard P. Joy, president; Henry T. Sheldon, vice-president, and H. S. Hazen, secretary and manager. The directors are Joy, Sheldon, Quirk, Dennis, Hazen, and I think that is all. Mr. Quirk resides in Ipsilanti and the
 522 rest of them in Detroit, except myself, and I live in La Salle. The tracts of land which lie along the Illinois and Michigan Canal, being the tract furthest north and furthest east, that is involved in this suit, we have farmed part of it and we have a rock dump on another portion of it. It is from the Rockwell mine, the Rockwell shaft, that the dump is being taken. That is located on Lots 1 and 2. It is located on an independent lock. We have
 523 farmed a part of that land. I can't tell how much without seeing the map. We have rented it out. We claim to have owned it since 1883. I don't know who we rented it to in '83, in '84, or in '85, or in '86. I don't locate any year. I don't know in '88 or in '89 or in '90 or in '91. I don't know in '92, in '93, in '95, in '96, in '97, in
 524 '98, in '99. I don't know in 1900, in 1901, in 1902, in 1903, in 1904, in 1905, in 1906, in 1907, in 1908, in 1910, in 1911, in 1912; I don't know.

Q. How much did you get for the rental of that land for any of those years?

Objected to by the plaintiff; objection sustained; defendant excepts.

525 The rock dump on the land traversed by the right of way of the C., B. & Q. would cover about fifteen acres.

It is about twenty feet high. The land which lies practically south of the tract which was first described and which is traversed by the C., B. & Q Railroad and which lies east of the Vermillion, being a part of the northeast of 23, has been farmed by tenants.

Q. Do you remember who have been the tenants of those lands for any time since 1892?

Objected to by the plaintiff; objection sustained; defendant excepts.

526 Charles Segart has farmed it this year. August Lavins farmed it for 1911. August Lavins farmed it in 1910. He has farmed it for four years. Before that Thomas Bowers for two years; before that George Simpson; I don't know how long he farmed; a good many years; several years; I don't know.

Q. Do you know the rental which you got for the use of those premises during any of those years?

Plaintiff objects; objection sustained; defendant excepts.

The land immediately west of the Illinois Central right of way and south of the river, being a part of the southeast quarter of Section 23, and a part of the southeast quarter of Section 22, has been farmed. The 106 acre
527 tract south of the Illinois River, which is the southeast of 23, being almost directly west of the first piece described, has been farmed by Mike Charles this year and last year. For the years 1909 and 1910 Charley Shepp farmed it. For 1909 and for two or three years prior to that time Tom Bowers farmer it. I can't go back any farther. The piece lying to the westward of the piece
528 in 22 and 23, going straight west, and lying along the river and to the east of Huse's Slough, having something like 400 acres in it, being a part of Section 21; that part east of the Illinois River, of the northeast quarter,

was farmed for about three years, three or four years, by Dooley. Prior to that for about twenty-five years it was farmed by another Dooley, a brother to the first man mentioned. These two men have farmed it during the time we have owned it. The balance of the piece is farmed this year by William Brannen, a man by the name of Boers, and another by the name of Cosgrove.

529 The same parties farmed it this year and the year before. They have been there altogether three years. Before that there was a multitude of people there farming the year before. I couldn't tell you who they were. Five years ago Charles Segart and a man by the name of Guest farmed it. I have given you all the names I can think of. The same people, I think, farmed it in 1905. In 1908 Mrs. Waugh, and before that Mrs. Waugh. She had it three years. Nobody farmed it in 1902. Back as far as I know, Samuel Waugh, the husband of Mrs. Waugh, farmed that land. She succeeded him.

530 Q. What rental did you obtain for those tracts which I have last described to you? A. Two-fifths of the crop.

Objected to by the plaintiff; objection sustained; defendant excepts

Mr. CHIPERFIELD: Q. About how fast are you mining the coal on this land?

Objected to by the plaintiff; objection sustained; defendant excepts

There is timber around the edges of the stream. Some large cottonwoods and some willows. That is merely a fringe of timber along the edge of the stream.

531 Mr. CHIPERFIELD: Q. Is there any of this land which rises high towards the bluffs?

Objected to by the plaintiff; objection sustained; defendant excepts

There is about thirty acres of this land which is not

bottom land. It lies in the southeast corner of 21. It has been pasture.

Q. Now, the land which is on the south side of the land between—on 22 or 23—this triangular shaped piece where you didn't understand which piece I referred to, which by way of identifying it is west of the Illinois Central, there is a road which runs from east to west there, isn't there? A. Yes, sir.

Q. Does the land towards that road rise quite high?
532 Objected to by the plaintiff; objection sustained; the defendant excepts.

The land next to the road on the north side is used for pasture purposes. There is some small timber on that land, scrub timber; oak and everything. Right to the east of the Illinois Central bridge, between that and the Little Vermillion, no part of that land has been used for a vegetable garden or the raising of millet. I believe there is a small patch there that has been used by some
533 one for a garden patch. I don't know anything about it. I don't know if any millet was raised there this year. I believe there was none raised there this year. There was a vegetable garden there. It was not a tenant of ours. It was a squatter.

534 The works of mine No. 1 extend out under 23 and up under 26. Twenty-three is involved in this suit. The map is a correct representation of the workings of the shaft at that time as far as they had extended into 23. The Cedar Point mine has nothing to do with this suit. Mine No. 5 is at Cedar Point. The Union mine is in the edge of Peru. The Union mine has to do with the workings upon lands involved in this suit; that part of the northeast quarter of 21 east of the Illinois River.

536 *Re-direct Examination of the Witness Howard S. Hazen
by Mr. Butters.*

Q. Mr. Hazen, one question. Who has paid the taxes that have been levied against this land during the times that you have covered by your testimony?

Mr. CHIPERFIELD: I object to it for the reason, if the court please, the payment of taxes cannot be shown in that manner.

The COURT: I think I will let him answer.

The defendant excepts.

A. I have paid the taxes on all the lands since 1890, as treasurer of the coal company.

*Re-cross Examination of the Witness Howard S. Hazen
by Mr. Chiperfield.*

I have paid all of the taxes assessed against the property that I have been charged with. I have the tax receipts. I don't have them with me. I will produce them
537 for your inspection if necessary.

Mr. CHIPERFIELD: Well, let us then defer the further cross-examination until he returns with the tax receipts.

The COURT: Is there anything further?

Mr. O'CONOR: That is all.

Mr. CHIPERFIELD: But I want it understood that it is with the understanding, your Honor, when the receipts come in there may be further cross-examination with reference to them.

Mr. O'CONOR: Well, we won't produce them, your Honor, unless they want them.

Mr. CHIPERFIELD: Yes, we want them. We want to examine with reference to them.

The COURT: Call your next witness.

540-558 Caption of depositions of Clarence O. Davis, Obediah Hicks, Rollin L. Reed, T. E. Marsh, Thos. J. Kelly, Homer R. Clark and F. G. Blakeslee, taken in the above entitled cause on the 13th and 16th days of April, 1905, at the office of J. L. O'Donnell, Young Building, Joliet, Illinois, and stipulations with reference thereto.

558 CLARENCE O. DAVIS, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. Curran.

(Deposition read by Mr. Butters.)

My name is Clarence O. Davis. I am twenty-nine years old and live in Joliet, Illinois. Have lived there the last fifteen years; am a photographer. Have been engaged actively in that business about seven years. I went out
560 with Mr. Gale seven years ago this month and went in for myself. It has been photography with me all my life ever since I was a kid; three or four years, anyway. Altogether probably ten years' experience. I did viewing on the ditch when they dug the big ditch down through
561 here. I took the negatives from which these photographs, Exhibits 2, 3, 4 and 5, were made. The negative for Exhibit 2 was made on March 2, 1905. I am acquainted with the stream in the State of Illinois known as the Des-
562 plains River, but not to any great extent. I have been at the Town of Lyons in the County of Cook in the State of Illinois. I have seen the masonry work that is called the "Water Diversion at Lyons." I have been there. I was there last on March 2, 1905. I took a photograph
563 of that on March 2. I focused the camera when the negative was made. There was nobody present but myself
564 when this was done. I took charge of the negative after the exposure was made. I brought it to Joliet. I kept it in our studio at Joliet. I developed it and it was

printed under my direction. The proofs were mounted in my studio under my direction. Exhibit 2 is one of the prints and photographs made from the negative I
565 have mentioned. I don't really know what it was put there for. Well, I will have to change that. It has relation; that is what it is in there for. In making Exhibit 2 I photographed the spill-way. It is the Sanitary District's spill-way. Near the Town of Lyons adjacent to
567 the spill-way. The camera stood about ten to twenty-five feet from the masonry at the time the photograph, Exhibit 2, was made. It was focused upon this spill-way.
568 It was photographed to the best of my ability. To the best of my ability, Plaintiff's Exhibit 2 is a correct photograph of the spill-way and water diversion at that place.
569 I took the negative for Exhibit 3 on March 2, 1905. It was the Desplaines River between the spill-way and Lyons; probably about an eighth of a mile from the spill-way; about a mile or a mile and a quarter from Lyons. I am acquainted with the locality of the controlling works and Bear Trap Dam at Lockport. I don't know how far from the controlling works and Bear Trap Dam at
570 Lockport Exhibit 3 was taken. I don't know the distance between here and Summit. It would be purely guesswork as to the distance where Exhibit 3 was taken and Bear Trap Dam and the controlling works. Exhibit 3 was taken above the point where Bear Trap Dam is located on the Desplaines River. I don't know the directions there except that I was told. I never was there
571 except that one time. The camera was located about 300 feet from the bed of the stream of the Desplaines River. It was focused upon the Desplaines River. I made the exposure. To the best of my ability it was properly done. After the negative was made it remained in my charge.
572 I took it to Joliet to the Savory studio. It has been in my charge from then until the present time. The nega-

tive was finished and the prints made from it under my direction. They were mounted and put in their present
573 form under my direction. There was nothing done in the process of that work that was not properly done, according to my judgment and experience as a photographer. Exhibit 3 is one of the photographs made by me and under my direction from that negative. I have been at the Bear Trap Dam and controlling works at Lockport; been there three times. The controlling works and Bear Trap Dam is about five miles from Joliet. I
574 was last there February 19, 1905. At the time I took the photograph of the Bear Trap Dam and controlling works there was nobody with me but a helper to carry the camera that day. His name was James Hurley, I believe.

When Plaintiff's Exhibit 4 was taken the camera was located on the west bank of the drainage, focusing east. I mean the Sanitary District Canal stream. I should judge about 250 or 300 feet I focused the camera. In
575 my judgment and experience as a photographer, it was correctly done. I exposed the negative. I took charge of it. It has been in my charge ever since. It has been kept in the Savory studio, Joliet, Illinois. The negative was developed and prints were made under my direction. They were also mounted under my direction. It was
576 focused on the controlling works as a whole with the Bear Trap Dam as a center, because I tried to get one of these up there (pointing to an object in the picture); one of these flood gates. Water was running over the
577 Bear Trap Dam. All of the apron of that dam was under water. It was not frozen; was running free. I took the photograph about 11 o'clock in the forenoon. I made Plaintiff's Exhibit 5. I am acquainted with the street on which the bridge is located from which that picture
578 is taken. It is Jefferson street, Joliet. There is a bridge

over the Desplaines River on Jefferson street. I have been acquainted with it ever since it was put in. The camera was pointed north at the time of the making of the photograph. The camera was situated on the north portion of the north sidewalk at the time of the taking
579 of that photograph. There is a sidewalk on each side and a roadway in the middle. It was west of the center of the bridge, I should judge, about a dozen feet. It was just a few feet from the north edge of the bridge; probably the middle of the walk. The walk is about eight or ten feet wide at that place. I am not acquainted with the artificial retaining walks, built along the Des-
580 plaines River at that point, but I know there are such. I have seen them; not very frequently. They consist of
581 stone masonry about ten or twelve feet high. I focused the camera when the photograph, Exhibit 5, was taken. I made the exposure and took the negative. I have been in charge of the negative from that time until the present time. It has been kept in the Savory studio, Joliet. The negative was developed, photograph printed and mounted under my directions. The work was properly done. I brought Exhibits 2, 3, 4 and 5 before the commissioner. They are in the same condition now they were
582 when completed, except the exhibit marks. The gallery where I do work is operated under the name of the Savory studio. It is a sort of a trade mark. On the 2d of March, 1905, when Plaintiff's Exhibits 2 and 3 were
383 made, the condition of the weather was about freezing point or slightly above. The weather was sort of cloudy, too. At the time Plaintiff's Exhibit 4 was taken, on the 19th of February, 1905, it was below freezing point. It was deuced cold at that time. Thirty below zero. The
584 mercury reached that point about Monday, the 13th of February. It maintained that for about a little over twenty-four hours, and then gradually came up.

585 At the time Exhibit 4 was taken the water was frozen
 about and running water below the Bear Trap Dam.
 When Exhibit 4 was taken the Bear Trap Dam was run-
 586 ning water, running quite swiftly. From the 13th of Feb-
 ruary, 1905, down to the 26th of February, 1905, the tem-
 perature at Joliet was around freezing point and below
 freezing point most of the time. On the 26th of Febru-
 ary, 1905, the day I took Exhibit 5 from the Jefferson
 street bridge, it was just about freezing point. The sun
 587 was bright. No, there had been no breakup or thaw just
 about that time.

At the time I took Exhibit 5 the Desplaines River was
 running water, with some ice coming down with the
 water. It was all open. The current was swift. Ex-
 588 hibit 5 was taken about noon. There was bright sun-
 shine that day. On that day I had normal vision. I saw
 the current of the Desplaines River. The current was
 589 quite swift. The Jefferson street bridge I mentioned is
 not the only bridge across the Desplaines River in the
 City of Joliet. Looking north from the Jefferson street
 bridge it is four blocks to another bridge. That bridge
 590 is called the Cass street bridge. That is the Cass street
 bridge shown in the field of that picture across the Des-
 plaines River. It is seven blocks from the Jefferson
 street bridge to the Jackson street bridge. The Jackson
 street bridge is north of the Cass street bridge. Ex-
 hibit 5 was taken of the Desplaines River, what used to
 591 be the Desplaines River, the bed of the Desplaines River.
 The parallel objects extending north and south towards
 the Cass street bridge from the right and left field of
 592 that photograph are stone walls; the same stone walls.

Plaintiff offers in evidence Plaintiff's Exhibits 2, 3, 4
 and 5.

Objected to by defendant on the ground they are in-
 competent, irrelevant and immaterial; objection
 overruled; the defendant excepts.

Cross-Examination.

593

599 Exhibit 2 admitted in evidence without objection.

Exhibit 10 admitted in evidence without objection.

600 Exhibit 4 admitted in evidence without objection.

Exhibit 5 admitted in evidence without objection.

601 Exhibit 2 to the deposition marked Exhibit 10 in this
case.



Exh-10

602 Exhibit 4 to the deposition marked Exhibit 11 in this
case.



Stacy
to Mr
Fitch

Exh. 11

603 Exhibit 5 to the deposition marked Exhibit 12 in this case.



59097
Joliet
Feb. 21 - 05

Ex. 12

604 *Cross-Examination of the Witness Clarence O. Davis by*
Mr. Quinn.

(Deposition read by Mr. Chipperfield.)

I developed the plate in every instance that Exhibits 2, 3, 4 and 5 were made by the printer. They were all done under my supervision. I was there at the time. The printer would watch the frames and hand them to me when they were done or sufficiently printed. I was told to go to these points February 26, February 19 and March 2, 1905, by J. L. O'Donnell. He was the same J. L. O'Donnell in whose office we are now taking depositions. He is an attorney in the City of Joliet and the only one by that name in that city to my knowledge. They were taken for him. I selected the points at which they were to be taken. I was told to take these things from points of view which practically I selected myself, but it was done under their supervision. Mr. O'Donnell and I had a conversation as to the general places I was to go. For instance, he told me to take the spill-way. What I mean by that, I mean he didn't tell me any definite place; just told me a general view and I went and made that of these different things. There were four specific cases. He told me to take the controlling works at Lockport. I selected which side I should take. He showed me a little print of the spill-way and told me to make something like this and then went down here to the bridge and he says, "Just take the canal north from the bridge," and I went ahead and did it. I made four plates. No, I think I have six or seven. I will not say exact. You have the plates used on these occasions. Yes, I did show Mr. O'Donnell two of them. Mr. O'Donnell determined which should be used for the purpose of making these pictures. I used an 11x14 camera. There was no doctoring done whatever of these pictures. For instance, "dodging" is retouch-

ing. I developed them. They went through our regular form of developing. I was just engaged in this work
 610 on two or three occasions, March 2d, February 19th and February 26th. I was employed by Mr. O'Donnell to do this work. I am not paid for it yet, but I look to Mr. O'Donnell for the money.

(Signed) CLARENCE O. DAVIS.

611 The plaintiff then offered in evidence the deposition of
 OBEDIAH HICKS:

Direct Examination Read by Mr. O'Connor.

My name is Obediah Hicks and I reside in Joliet; have lived there since 1862. My business in 1862 was building and repairing canal boats and dry dock. My dry dock was in Joliet. My firm operated canal boats in the Illinois and Michigan Canal and the Illinois River. Since I lived in Joliet my residence has been on the west side of the Desplaines River; have lived in Joliet all of the time from 1862 to 1900. For a period of about ten years before the year 1900 I saw the Desplaines River every day.
 612 The condition of the river during any of those years in times of low water, particularly between Jefferson street in the City of Joliet and what is known as the Rock Island bridge south of Jefferson street, in the driest times there was practically no water. Oh, there was some in the ponds, but no running water going over Malcolm's dam down to the Grist Mill. I knew the dam that was formerly on the Desplaines River near Jefferson street in the City of Joliet. It was dam number 1. In times of low water, during these years from 1862 until the Sanitary District water was turned into the river, the condition of the Jefferson street dam, prior to 1870 was dry very
 613 often. After that it was not dry much. I know where the race-way at Norton's mill in Lockport is located. I

know the surroundings. From 1870 up to 1900 water escaped from the Illinois and Michigan Canal and flowed into the Desplaines River near Norton's mill. When I say prior to 1870, that there was no water flowing over the Jefferson street dam, I think in every summer, four or five times during that period, probably I observed it. At other times of low water about six inches flowed over
614 the dam. I was acquainted with the condition of the Desplaines River before 1900, north of Ninth street, north of the mill at Lockport. In times of low water it was dry. There was no running water in the river. There was an
615 island in the river south of Jefferson street prior to the making of the Sanitary District improvements; two, in fact. On the north island near the Jefferson street bridge there was timber. I don't think I ever waded across the river between Jefferson street and the Rock Island bridge. I was acquainted before 1900 with the Illinois River below Peru and La Salle. I observed the condition of the river there in times of low water on one occasion. It was '65 or '66, I can't remember which. It was at what
616 we call Tree Top Bar, at that time, a shallow place in the river. The depth of the water in the Illinois River there on that occasion was ten or twelve inches; some places deeper and some shallower. I ascertained the depth by wading in and seeing teams draw through it, hauling boats up. The boats were towed from Tree Top
617 Bar to Peru. I should think about five or six inches, somewhere about that. That was a flat bottom boat made for lightening.

*Cross-Examination of the Witness Obediah Hicks Read
by Mr. Chipersfield.*

I am seventy-five years and ten months old. I seen and observed the Desplaines River during the time I have lived in Joliet. Occasionally I have seen it very low.

- That was occasioned from the fact that no water was coming down the river from the Desplaines River. The Desplaines River rises somewhere in Wisconsin. I can't tell you the location exactly. I can't tell you how many square miles are contained in the water shed of the Desplaines River. At the time I refer to it was an extremely dry season with no rainfall in or about the water shed.
- 618 The Desplaines River at the time I speak of was very largely controlled, as to the volume or stage of water, by the amount of rain that fell upon the country above and upon its water shed. These times I have mentioned are the extreme low periods of water; they are the exceptional cases. These times that I speak of occurred in an extremely hot and extremely dry portion of the year. There was some water coming down all the time. I have seen great floods of water coming down the Desplaines River in times of extreme rain. It overflowed the land sometimes half a mile wide. The general depth would be
- 619 two or three feet. There would be places much deeper than that. That was the general depth. There is a stream known as Hickory Creek running through Joliet. That stream at times rises very rapidly. That stream empties into the Desplaines River. I have seen that stream pouring a great flood into the Desplaines River. Under those conditions, at the widest point, I have known the stream to be 500 feet wide, and of a depth of three feet. It has sometimes overflowed a large portion of the City of Joliet. Sometimes caused considerable damage and great inconvenience in the lower part of the city. In conjunction with the Desplaines River it would ultimately and eventually reach the Illinois River.
- 620 In 1870 the canal was deepened above Lockport, the Illinois and Michigan Canal. It brought a large quantity of water from Chicago. It affected the Desplaines River below Lockport, but not above, because there was an

extra amount of water wasted or allowed to come from the canal and go into the Desplaines River. That condition has been prevailing ever since the City of Chicago has been discharging a considerable amount of water into the Illinois and Michigan Canal for the purpose of getting rid of their sewage, and that would be discharged

621 into the Desplaines River. That condition has continued from 1870 until the Drainage District was formed. Since that time those periods of low water have not existed in the Desplaines River. They have not affected the river in any way. The discharge of the Illinois and Michigan Canal entered the Desplaines River, a portion of it at Lockport; the other portion at Joliet. The Jefferson street bridge is below Lockport. Malcolm's dam is below Lockport. Norton's mill is at Lockport. It is below the point of discharge. All of these

622 days that I have mentioned with reference to the low water were changed by the operation of the Illinois and Michigan Canal. The sum and substance of the whole matter is that from 1862 to 1870, during dry seasons, the Desplaines River was low. During the wet seasons it would rise. The stage of the Desplaines River was regulated by the amount of rainfall within the water shed of the Desplaines River. Eighteen hundred and sixty-five is known as one of the years of extreme low water upon the Illinois River. I am not positive that I ever knew

623 the Illinois River to be lower than it was in 1865. It was extreme low water. Tree Top Bar was all under water, but it was a very small amount of water over it. The bar was probably half a mile wide. I suppose it is caused by some action, by water flowing in from the side. I think Bureau Creek comes in there somewhere in that vicinity. I should say it was close in the vicinity. I never was boating below Tree Top Bar. I have been at the towns, but not on the river. I can't tell you the shape of Tree

624 Top Bar. I have driven our team about a hundred feet from the bank of the river. Since the dams were constructed at Henry in 1872 there has been plenty of water over it. The dam at Henry raised the depth of the water at the bar seven feet. There would be about eight feet, I would say, of water that would be due to the creation of the added depth; among other things of the building
 625 of the dam at Henry. I never personally observed an extreme flood stage upon the Illinois River. I never seen it at other times than I have mentioned. There was timber on the north island below Jefferson street bridge. The first island was, say, thirty feet wide and fifty feet high. The highest elevation was six feet wide when the water was pretty low. The north point was the highest,
 626 I think. There were some deep holes around the island. The lowest condition that I have ever seen the highest point of the island would be about six feet above low water. The other island was about three-quarters of an acre. It was pretty nearly two blocks from the first island. It was oblong, rounded top, highest in the middle and sloped down at the sides. It was about 200 feet long and 100 feet wide in the widest place. It was about four
 627 feet above the lowest stage of water I have ever seen. That island has been removed. The second island was removed. These two islands were both removed from the river about five or six years ago. I saw them during the progress of the work. Before that time I saw them most every day, when I was crossing the river, I could see them. They were always out of water except in a very wet time they would be under water. Since 1870, when the Illinois and Michigan Canal was turned in, the water was raised generally. The first island would be more than three or four feet out of the water and the second island, call it a foot.

Re-direct Examination of the Witness Obediah Hicks
Read by Mr. Butters.

The Illinois and Michigan Canal became separated from the river again at the Jefferson street dam. There was a lock there. The level of the Illinois and Michigan
 629 Canal between Joliet and Channahan was called the Channahan Level. Between 1870 to 1900, I have seen not over six inches on the top of the dam. At the present
 630 time there is a good deep stream running there all the time. It is about 200 feet wide. It is probably going
 631 about five miles an hour. The appearance of the water is rough. It makes a noise when it meets any little ob-
 632 struction. I have seen some floating ice, but no solid ice since 1890.

Re-cross Examination of the Witness Obediah Hicks
Read by Mr. Chipperfield.

When they took out these islands, that deepened the stream. Some of the water from the Illinois and Michigan Canal didn't get down as far as these islands. Some of it was diverted to feed the Channahan Level of the Illinois and Michigan Canal. If the canal was low and the Desplaines River was higher, some of the water
 633 would go in as a natural consequence. There were gates to gauge the amount of water that was let in here above Jefferson street. I haven't made any measurements to ascertain the current in the Desplaines River at the present time below Jefferson street. I am not an expert in gauging the current of a stream. I simply speak as an ordinary observer. I made no close or careful observa-
 634 tion for determining the speed of the current. I don't want to be exact when I say that the current may be five or six miles an hour. Very easily there might be a latitude of several miles less per hour than I have made. It de-

pendes on the height of the water. It comes more rapidly when there is a large body of water. When I speak of five or six miles an hour I refer to the time when the water is high; in spring, usually. It depends a great deal on the rain and the breaking of the ice. When all of these conditions are favorable there is a greater current and during times of draught the current becomes much
 635 less. At other times the current of the Desplaines River, below Jefferson street, goes as low as two or three miles an hour. There is very little difference in the width of the stream, because the walls are almost perpendicular.
 636 The width would be about the same. After the Illinois and Michigan Canal had added this amount of water into the Desplaines River, I have never seen it frozen across below Jefferson street. Above Jefferson street there would be floating ice in the stream. That continued after the adding of this water by the Illinois and Michigan Canal. It made quite a rapid current and within that current the ice would not form. I think I have seen a skim of ice across the upper basin. It would be a very thin coating of ice and the running water would speedily break it up.

637 *Re-re-direct Examination of the Witness Obediah Hicks*
Read by Mr. Butters.

I remember when the river was offensive here in Joliet before 1893 or '94. There was some ice on the basin every winter as to being frozen above Jefferson street dam. It would be ice that would be formed for a very short time and the rapidity of the current would soon break it up. During the last five or six years there has not been any offensive odor, not like there has been.

(Signed) OBEDIAH HICKS.

Deposition of ROLLIN L. REED, offered in evidence by the plaintiff:

ROLLIN L. REED:

Direct Examination Read by Mr. Butters.

My name is Rollin L. Reed and I reside in Joliet. I live on the east side of the city.

- 638 I have lived in Will County since '44; have been in the City of Joliet twenty-two or twenty-five years; have not been in a regular business during that time in Joliet. I was connected with the hardware business and real estate business. Since '44 I have lived one year in Joliet and for seventeen or eighteen years a mile west of Joliet, on what was then known as the Troy road. I have been familiar with the Desplaines River ever since I can remember. I remember when the Jefferson street dam was taken out and the improvement made in the river here some years ago. At that time I paid considerable attention to it. I never studied engineering as a profession. I have never practiced surveying or engineering. I observed the Desplaines River in the City of Joliet in dry seasons before the Sanitary District made their improvements. I observed it at different points. South of Jefferson street I seen it without any water except in pools, and I have seen it with quite large amounts. In dry times, before this Jefferson street dam was removed, I have seen it without water there repeatedly in dry times. I am acquainted with the Desplaines River above Lockport where it overflows at Norton's mill. I have observed it there at times of low water and in dry seasons.
- 640 I have seen it when there was no water running. I know where the station and tracks of the Santa Fe Railroad are in Lemont. The Desplaines River came a short distance from that point originally. The bed of the river

was plainly visible from the tracks. I have observed the condition of the river there in the summer time, opposite Lemont. It was bare of water except in small pools.

641 Opposite Lemont was rock, broken stone, presumed to be sod of rock below. From Lemont to Joliet, by the river, it is about sixteen or seventeen miles. By direct route, about fourteen miles. From Lemont to Joliet, in a state of nature, a great deal of it was a shallow channel. When the waters rose they spread out over the valley very considerably. I recognize the stream purporting to be shown in Exhibit 5. Prior to the Sanitary District work or change in the river at Joliet there was a livery stable on the east bank of the river. The bank was a loose, rock bank, laid up; part of it was a natural

643 bank. There was a warehouse there. These buildings were taken away except one, the building standing at Jefferson street now. That is not shown in this picture.

644 The present channel through Joliet is shown in Exhibit 5 as approximately 250 feet wide; about 200 feet. I frequently passed over this and other bridges in Joliet. In this 200 foot channel the water has always been flowing. Below Jefferson street it is more rapid than between Jefferson street and Cass. Below Cass, I should say, four miles an hour, and below Jefferson from four to six miles an hour. The east bank is walled by loose stone embankment from Jefferson street. The bank extends down the river just above the mouth of Hickory Creek, between half and three-quarters of a mile. As it goes south, it is lower. I don't know its exact height. There were no embankments or levees there before the change. There were a number of people living along there. Before the Jefferson street dam was taken out, I have skated on the

646 river many times. I have observed it frozen different winters. I have seen it frozen down to the crest of the dam. I don't know how many, but a number of winters.

647 The offensive odor of the stream called my attention to
 it. I know the Illinois and Michigan Canal about where it
 enters the basin at Joliet; just above the dam, or at the
 upper dam, what is known as the upper dam here, the
 north dam. The Illinois and Michigan Canal again leaves
 the basin just above Jefferson street. It was supplied
 with water between Jefferson street and the lock above it
 through gates. The water supply was taken from the
 basin. Between 1870 and the taking out of this dam, I
 observed the condition of the water in the Illinois and
 Michigan Canal several miles south; five miles south of
 Jefferson street. The stage of the water was normal. I
 648 have never seen the present channel of the Desplaines
 River through the City of Joliet frozen. There is no rea-
 son why it doesn't freeze, except the current. I have
 seen it frequently since the water was turned into the
 channel at Joliet, the last five years, at various points. I
 may have seen parts of it frozen during that time. Be-
 tween Cass street and the Rock Island bridge I have seen
 only small parts of it along the border; never seen it
 frozen over any number of feet from the bank. I don't
 think I saw this channel in Joliet during the coldest
 weather of February, 1905. I have seen the river in the
 past five years in cold weather, during different winters.

650 It is three blocks from Jefferson street to this Cass
 street bridge shown on Exhibit 5. This Cass street is
 north from Jefferson street. Jefferson street bridge is
 next north of Cass street. Jackson street is two blocks
 north of Cass street on the west side and three on the
 east side. The walls of this channel shown in Exhibit 5
 between Jackson street and Jefferson street are composed
 of stone, cement and sand. These walls were put in at
 the time of the construction of the Sanitary District
 channel. At the time of the change in the channel there
 651 was a dam constructed about Jefferson street. Part of

652 it is shown in Exhibit 5. The west end of the raceway runs under the Jackson street bridge. There is a water plant north of Jackson street. It extends about 300 feet north of the street. I think that water power plant is more than 300 feet; 450 feet, I believe. I have visited the controlling works since the water was turned into the

653 channel. I have seen what is known as Bear Trap dam at Lockport. I have seen the Desplaines River, in a general way, between the controlling works and the mouth of the Desplaines River, where it empties into the Illinois, in many different places. The water that is not taken by the canal to maintain the Channahon Level goes through this channel in Joliet and through the Desplaines River down into the Illinois River. The Illinois and Michigan Canal still enters the basin in Joliet, coming from the north, and it is taken out in Joliet from the Desplaines River, except what water is taken into the Illinois and Michigan Canal at Joliet, all of the water going over the Bear Trap dam passes down the Desplaines River. The Illinois and Michigan Canal runs against the retaining wall in the city. The Illinois and Michigan Canal between Cass street and McDonough street is about seventy-five to ninety feet, I think. The

654 Illinois and Michigan Canal frequently is kept full of water in the winter season. That is, part of it; not all of it. Some levels are drawn out; others are retained. The lever above here, between here and Lockport, was drawn last winter. I should say the height of these retaining walls in the channel between Jefferson street and Cass street was from twelve to sixteen feet. There was considerable excavation at the place between Jackson and McDonough street, in the change of the river; and from

655 Jackson street north, taking the entire distance, it varied from one to five feet. Silt and rock were taken out of the channel. This levee or embankment from Jeffer-

son street on the east bank of the river to Hickory Creek was constructed at the same time the other work was done. The channel of the Desplaines River was widened in the City of Joliet between Jackson and McDonough streets; I don't know how much. From the Rock Island Bridge south from Jefferson street, it is about three blocks. The first street south of Jefferson street would
 656 be Washington, then Marion and then Lafayette. From the Rock Island bridge to McDonough is about five blocks. There is a wagon bridge at McDonough street. I remember when the present channel received the water from the Drainage Canal. It was about five years ago. Since that time I have passed over it from six to eight
 657 times a week. There was always water flowing. As to the current, it was always rapid. These concrete walls were all done before the water was turned in.

659 The COURT: Well, you will read the cross-examination of that deposition.

Mr. CHIPERFIELD: I think, if your Honor please, we may perhaps be able to state some of the objections to these deeds. However, whatever the court would prefer to do, whether we do that now or later or go ahead with the depositions——

The COURT: I haven't any choice in the matter.

Mr. CHIPERFIELD: All right.

Mr. O'CONOR: You want the jury here?

Mr. CHIPERFIELD: The jury won't be interested in it. It will take a few minutes. Perhaps they would prefer to go to their jury room and take it easy.

The COURT: Well, you may retire to the jury room, gentlemen, for a few minutes.

(Whereupon the jury was withdrawn and the following proceedings were had in their absence:)

Mr. CHIPERFIELD: Where are the Illinois Reports, your Honor? I would like to have the 63d, 129, 181, 39, 235.

Mr. O'CONOR: I would like the 69, 87 and 104.

Mr. CHIPERFIELD: I want to state this objection to each of these deeds, and I want it repeated as to each Exhibit 1, 3, 4, 5, 6, 7, 8 and 9.

We object to the introduction of this Exhibit 1 because no proper foundation has been laid for its introduction,
660 because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Mr. BUTTERS: Which deed is that?

Mr. CHIPERFIELD: Each deed.

Mr. BUTTERS: Oh, each deed.

Mr. CHIPERFIELD: It is a general objection I am stating; then I will take it up separately.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized by law as possessing authority for such purpose.

Third. Because the description contained in the deed does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a
661 variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence re-

serves to others than the grantee certain estates as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid for its introduction, because it does not tend to prove any of the issues in this case.

We object to the introduction of this Exhibit 3 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized by law as possessing authority for
662 such purpose.

Third. Because the description contained in the deed does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence reserves to others than the grantee certain estates, as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and
663 immaterial, because no proper foundation has been laid for its introduction, because it does not tend to prove any of the issues in this case.

We object to the introduction of this Exhibit 4 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any persons recognized by law as possessing authority for such purpose.

Third. Because the description contained in the deed does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a va-

riance between the allegations of the declaration and the deed offered.

664 Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence reserves to others than the grantee certain estates, as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of said wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid for its introduction, because it does not tend to prove any of the issues in this case.

We object to the introduction of this Exhibit 5 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized by law as possessing authority for such purpose.

665 *Third.* Because the description contained in the deed does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence reserves to others than the grantee certain estates as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid
666 for its introduction, because it does not tend to prove any of the issues in this case.

We object to the introduction of this exhibit 6 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized as possessing authority for such purpose.

Third. Because the description contained in the deed does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title with-
 667 out any exception, while the deed offered in evidence reserves to others than the grantee certain estates as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid for its introduction, because it does not intend to prove any of the issues in this case.

We object to the introduction of this Exhibit 7 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized by law as possessing authority for such purpose.

Third. Because the description contained in the deed
 668 does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declara-

tion are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence reserves to others than the grantee certain estates, as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid
669 for its introduction, because it does not tend to prove any of the issues in this case.

We object to the introduction of this Exhibit 8 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deeds.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized by law as possessing authority for such purpose.

Third. Because the description contained in the deed does not cover the premises described in the declaration.

Fourth. Because the description contained in said deed covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence reserves to others than the grantee certain estates, as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid for its introduction, because it does not tend to prove any of the issues in this case.

We object to the introduction of this Exhibit 9 because no proper foundation has been laid for its introduction, because, first, the grantors therein are not shown to possess the requisite qualifications and authority to execute said deed.

Because the certificate of acknowledgment appended thereto is not in due form of law or certified to by any person recognized by law as possessing authority for such purpose.

Third. Because the description contained in the deed does not cover the premises described in the said declaration.

671 *Fourth.* Because the description contained in said deed

covers other and different premises than those involved in this suit.

Fifth. Because the premises described in the declaration are not the same premises purported to be embraced in the deeds offered.

Sixth. Because the proof offered tends to create a variance between the allegations of the declaration and the deed offered.

Because the declaration alleges a fee simple title without any exception, while the deed offered in evidence reserves to others than the grantee certain estates, as appears by an inspection of said deed, and, therefore, said deed does not tend to prove an estate in fee simple in the plaintiff in this case.

Because said deed does not purport to be acknowledged in conformity with the law of the state wherein said acknowledgment was taken, because the person signing the deed as the grantor does not appear to have had authority to execute the said deed of conveyance.

Because the said deed is incompetent, irrelevant and immaterial, because no proper foundation has been laid for its introduction, because it does not tend to prove any
672 of the issues in this case.

Mr. CHIPERFIELD: Now, with reference to these deeds, and there are eight of them, I don't care to urge objection to the execution of these deeds as are, at the date of the offer, more than thirty years of age, with the exception of Exhibits 1 and 3. But, aside from the simple fact of conceding that ancient deeds of more than thirty years at the time they are offered in evidence prove themselves when attended by circumstances which show a fair presumption that they came from proper authority and a proper custodian, I want to rely in every case on each and every objection which I have made. The only point

which I waive is, as I think the court plainly understands, I don't want to waste any time raising questions as to the execution of deeds that are ancient, more than thirty years of age, although the other defects contained in the deeds I want to reserve the right to point out, but such deeds without dispute, by the decision of our courts and the court of many states, prove themselves. I will take up these deeds in the order that they are named and advance my objection to them.

Now, Exhibit No. 1 purports to be made by Henry L. Young, James H. Young and Mason Young, as trustees under the last will and testament of Henry Young, deceased, of the city, county and state of New York, party
673 of the first part, and it is signed by Henry L. Young, James H. Young, Mason Young, with the word Trustee appearing after each name.

It is acknowledged before a notary public in the State of New York. And there is no certificate of conformity attached to the deed.

Now, it is the law well settled that where a deed is executed in a representative capacity that there must be more authority than simply the fact of the deed being made. The jurisdictional questions have got to appear. And the power and the authority of the grantors have to appear. It is not sufficient that they should merely come in and say we are the trustees of a last will and testament of a certain person without the production of last will and testament, without production of their authority to make and execute this deed, either from the terms of the will itself or from the allegations of some proper court proceedings having jurisdiction both of the subject matter and of the person.

The court has passed upon this in the case of *Fell vs. Young*, 63 Ill. 106.

In this case a deed was introduced in evidence purporting to have been executed by one William Dunley, as administrator of James McGoosh, which included the premises in question in that section. McGoosh was the
674 patentee from the United States.

The defendant objected to the introduction of this deed on the ground, first, that no authority in the administrator to execute it was shown; second, because it was not properly acknowledged, and, third, because it did not conform to the statute.

These objections were overruled and exceptions taken. Whereupon the plaintiff offered in evidence a decree of the McLean Circuit Court, purporting to have been entered at the April term, 1835, of that court, on the petition of William Dunley, administrator of James McGoosh, deceased to sell the land of his intestate to pay his debts.

The defendant objected to the introduction of this evidence and the court sustained the objection.

The case was put to the jury upon the naked deed of the administrator, which does not show on its face any authority to the administrator to execute it.

The deed recites the order of the court directing a sale of decedent's land, in which there is no recital, and it does not appear that the notice required by law, or any notice whatever, was given to the administrator of the time and place of presenting the petition, or that the parties interested in the land had any notice of the proceedings to divest them of their title. Every person dying is pre-
675 sumed to leave heirs capable of inheritance, and before a decree can pass against them to divest them of their title to decedent's property, the notice required by law must be given them. In the absence of notice, the court will have no jurisdiction of their persons.

The law in force at the time this petition was filed, required the administrator, who desired an order to sell the land of his intestate to pay debts, to give at least thirty days' notice of the time and place of presenting such petition, by serving a written notice of the same, together with a copy of the account and petition on each of the heirs or their guardians or devisees of the testator or intestate or by publishing a notice in the nearest newspaper, etc.

Now I am not going to read all of it.

“But it is urged, if the acknowledgment was not in conformity——”

They raised the question of acknowledgment, that the acknowledgment was not in conformity in that it did not state that the grantor was personally known.

676 “But, it is urged, if the acknowledgment was not in conformity to the statute, the deed was properly admitted as an ancient deed. So far as the fact of the execution of the deed is involved, this point is well taken, and was it a deed from a party in his own right to another party, it would prevail where possession had gone with the deed. But this is the deed of one acting in a fiduciary character and from his position, having no power in and of himself to sell and convey the land of his intestate. That this is an ancient deed, being more than thirty years old, it cannot be denied, but we do not understand that the doctrine of the admissibility of such a deed in evidence, without some proof of its connection or of its acknowledgment in the mode required by law, to go so far as to dispense with proof of the authority of the party to make the deed. *Prima facie* this administrator had no power to make this deed, and until such authority is shown, and by competent proof, the deed can convey nothing, and is not admissible in evidence as a muniment of title though it is thirty years old.

“The doctrine that no proof of the execution of a deed thirty years old is required, springs from the fact that originally, by the common law and by the statute of most of the states, one or more witnesses were required to attest its execution, by whom its execution should be proved. After the lapse of thirty years the presumption obtains that the attesting witnesses are all dead. But no
677 presumption arises from lapse of time that the party executing the deed has the power to convey the land.

“All that is shown in the case is the deed of an administrator purporting to convey the land of his intestate, reciting therein an order of court which does not show that the court has jurisdiction to grant the order, nor is any order of the court shown.

“It is well settled if a deed purports to have been executed under a power, and is sought to be used in evidence, the power must be shown.

“So as to deeds executed by executors or administrators under an order or decree of court. And this power, as the court has said, in the cases above cited, must appear on the face of the decree. Its jurisdiction to grant the order or decree must be shown on the face of the proceedings.

“This is the only point we have deemed it necessary now to consider, and we are of the opinion, as no decree of court having jurisdiction to grant the order of sale has been shown, the deed of the administrator should not have been admitted in evidence.”

I want to call attention to the 181st Illinois on page 539. This was the case of *Reuter vs. Stuckart*, where a deed was purported to have been executed by an attorney in fact. The deed was more than thirty years old.
678

Now, the court refers to this case of *Fell vs. Young* and its says:

“Counsel refer to the case of *Fell vs. Young*, 63d Ill. 106, as being opposed to the view above announced. In that case an ancient deed was produced, which was made by an administrator, and failed to show upon its face that the court, which ordered the sale, had jurisdiction over the parties to be affected by it. The rule there announced is correct, as to the power there apparent upon the face of the deed was a public and statutory and not a private power. Such cases as that of *Fell vs. Young* involve the question of jurisdiction of the tribunal ordering the deed to be made, and in such cases the power should be shown. But, in a case like the one at bar, the proof of the power is only one of the facts to make out a due execution of the deed, and the due execution of the deed is presumed in the case of an ancient deed in view of the great length of time which has elapsed and in view of the possession taken, and other acts done under the deed.”

Now, that presumption could not arise in this case under any circumstances, for this deed is not yet thirty years old, has not the thirty years to give it sanctity.

679 Now, here is a deed which purports to be made by certain people as trustees under the last will and testament. Whether the man is dead, what the provision of his will and testament was, whether or not there was any power or authority in them in any shape, way or manner, to execute this deed is absolutely, wholly and entirely silent.

Here in the 205 Illinois, in the case of *Felix vs. Caldwell*, on page 159, they quote approvingly the case of *Fell vs. Young* and it also quotes approvingly the doctrine sustained. I don't mean that it is quoted approvingly in each of these cases, but the doctrine is sustained in *Jones on Evidence*, Section 312, first *Greenleaf on Evidence*, 141—

Mr. BUTTERS: Give me that again.

MR. CHIPERFIELD: Second Jones on Evidence, Section 312; 1st Greenleaf on Evidence, Section 141; Bradley *vs.* Lightcap, 201 Ill. 511; 2d Phillips on Evidence, note 429, page 396; Meegan *vs.* Boyle, 60 U. S. 130, and also—well, I think that is a sufficient citation of authority on that proposition.

Now, here is the situation. This deed comes into this court. We don't need to consider the doctrine of ancient deed, because that don't arise. It is not thirty years old
680 and it purports to be executed by some foreign trustees who live in the City of New York. Their authority does not appear in any way, shape or manner and involves and embraces several of the tracts of ground described in this petition.

Now, when you take the deed itself it should not be permitted in evidence, because it tends to create a variance between the allegations of the declaration as to ownership and the proof which is offered. For instance, now, when you come to the east half of Section 14, which they describe that they own in fee simple, absolutely fee simple, the deed recites as follows: "All of the east half of section 14 in township thirty-three north range one, east of the third principal meridian containing three hundred and four and twenty-two one-hundredths (304.22) acres more or less together with the shaft located on said east half of said section fourteen, known as 'Carbon Shaft,' and all of the appurtenances to said shaft meaning expressly to include as real estate in the word 'appurtenances' all buildings, steam engines, boilers, shafting, belting and implements now standing or being in use at or in said shaft, all of which are declared to be fixtures and part of the realty, excepting and reserving the rights of way over said east half acquired by the Chicago and Rock Island Railroad Company and the Illinois and Michigan Canal, and also excepting and

681 reserving that part of said east half known and described as lot seven," and there follows a number of lots which are not involved in this suit.

Now, it is a fixed principle of evidence, as I understand it, your Honor, that if the evidence introduced tends to create a variance between the allegations of the declarations and the proof offered, that the proof will be rejected. Now, when you take the allegations of this declaration with reference to Section 14, the exceptions which are contained in this deed do not appear. Of course, it is easy enough to say that these are things, perhaps, which would only diminish the right of recovery. That is true. There is more of this land that the deed purports to convey, if it conveys anything. But, if your Honor please, I do invoke this doctrine very earnestly that we are entitled to the benefit of the rule of law which says that where a variance is created in this manner, that the proof shall be rejected. There is a way of curing it which was well known to counsel, as well as to myself, and I don't care to waste any time on that, because I have no suggestion to make to anybody, as I stated once before, I have got all I can do to run my own end of the thing. But it does create a variance.

Now, when you come down to Section——

682 The COURT: Get me a piece of paper, won't you, Mr. Clerk, and give me a good lead pencil.

Mr. CHIPERFIELD: Is the northwest quarter of Section 14 in this? I forget. Do you remember? No, I don't remember.

Mr. BUTTERS: That is on the river, isn't it?

Mr. CHIPERFIELD: I couldn't tell you.

Mr. O'CONOR: Yes, 14 is practically on the river. No, that is way north.

Mr. CHIPERFIELD: Well, the southwest is in.

Mr. O'CONOR: Southwest is in.

Mr. CHIPERFIELD: Yes. May I cite those authorities again to the court or do you wish me to?

The COURT: No, I was not taking them down.

Mr. CHIPERFIELD: All right. Now, then, when we come to the southwest fractional quarter of Section 14, which they allege they have fee simple ownership of, it is described in this purported deed conveyance as follows:

“And all of the southwest fractional quarter of section 14, in the township and range aforesaid, containing one hundred and forty-seven and thirty-one one-hundredths (147.31) acres more or less, excepting therefrom an undivided sixty of six hundred and thirty-one (60-631) parts of lots described in a deed of the sheriff of La
683 Salle County to Edmund D. Taylor, dated the 2d day of May, 1845, and recorded in the La Salle County records in book 16, page 512, excepting also tracts conveyed by Edmund D. Taylor or the Northern Illinois Coal and Iron Company of La Salle, prior to March 1, 1873.”

Now, that don't purport to convey fee simple title in that property or any part of it, because that is an undivided portion and if it is reserved certain exceptions as to property heretofore conveyed, it must appear from the record what part is conveyed in fee simple.

Finally this particular deed was acknowledged before a notary of the State of New York. The acknowledgment is as follows:

“I, Henry A. James, a notary public in and for the said city and county in the state aforesaid, do hereby certify that Henry L. Young, James H. Young and Mason Young, trustees under the last will and testament of Henry Young, deceased, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day

in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act as said trustees for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16th day
684 of November, A. D. 1883.

HENRY A. JAMES,
Notary Public,
New York County."

Now, there is no certificate of conformity to the laws of the State of New York under the hand of the clerk of court with the seal of the court attached appearing in connection with this deed. Nor is it attempted to be proved by the introduction of a statute of the State of New York showing it has been executed in accordance with the provisions of that state. It is not executed in Illinois. It is executed in New York, and under those circumstances there must be a certificate of conformity or proof that it does conform to the laws of the State of New York.

Now, I want to refer to the case of *Egan vs. Connelly*, 107 Ill. 462:

685 "Plaintiff gave in evidence, upon the trial, a patent from the United States to Cosmore G. Bruce, a deed from Bruce and wife to Ell N. Keys, and a deed from Keys and wife to plaintiff, all embracing the land in controversy. Defendant objected to the reading of these deeds in evidence upon the ground that the acknowledgments do not show that the grantors were personally known to the officer taking the acknowledgment. Both deeds were executed and acknowledged in the State of Ohio and upon this objection being made plaintiff offered in evidence a book the title page of which reads thus: 'Statutes of Ohio. By authority of the General Assembly. In force

August 1, 1854. Published in pursuance to the act of the General Assembly of April 18, 1854.' And plaintiff then also offered in evidence Chapter 34, page 309, thereof, relating to the acknowledgment, etc., of conveyances. Defendant objected to this evidence, but the court overruled the objection and permitted the statute to be read in evidence; and the court also, after the reading of this evidence, permitted the deeds to be read in evidence. Exception was taken to this ruling and it is now assigned for error. No question is made but that the deeds were acknowledged as required by the statute read in evidence and it will therefore be unnecessary to compare the acknowledgments with the requirements of the statutes. We think the evidence was properly admitted."

Then it cites a section of the statute providing that statutes of other states may be introduced in evidence.

686 "And it is provided by Section 23, of Chapter 30, of the Revised Statutes of 1874, page 277, that 'all deeds, conveyances and powers of attorney for the conveyance of lands lying in this state, which have been or may be acknowledged or proved in conformity with the laws of any foreign state, shall be deemed as good and valid in law as though acknowledged and proved in conformity with the existing laws of this state.' And Section 22 provides that 'any legal mode of proving that the same is executed in conformity with such foreign law may be resorted to in any court in which the question of such acknowledgment may arise.'"

I also cite the 39th Illinois.

Mr. BUTTERS: That is an objection to "1" now?

Mr. CHIPERFIELD: Well, I am referring now to the deed No. 1 and each and every one of these deeds that are executed in a foreign state, and I will point them out, but what I am saying now applies to all of them.

In the 29th Illinois, on page 484. Now, here is a deed which is executed in the State of Virginia.

“It is insisted that the deed from Stephens, the patentee, to Fulton, was not sufficiently authenticated to entitle it to be read in evidence. There was an attempt to acknowledge this deed before the County Court of Jefferson County in the State of Virginia on the 26th day of April, 1829, to which the clerk of that court certifies on 687 the 28th day of September, in the same year. The presiding justice of that court also certifies that the clerk was duly elected and that his attestation is in form. Moore, a clerk of the same court, on the 11th day of July, 1853, certifies to the official character of the former clerk, on the 28th of September, 1819; and the presiding justice on the same day certifies to Moore’s official character. Then follows a certificate of conformity to the laws of Virginia, in which Moore states the certificate of acknowledgment of April 26, 1819, and of the 24th of April, 1820, are in conformity to the laws of Virginia, as they existed on the 1st day of December, 1818, the date of the deed, and on the 20th day of April, 1819, and on the 24th day of April, 1820, the dates of the acknowledgment.

“This certificate of conformity is not under the seal of the court, but a scroll is attached, which the clerk states is used instead of the seal of the court, which had been lost. The statute declares the seal to the certificate to be an authentication sufficient to entitle the certificate to be received. Having adopted this mode of authentication, we must conclude that it was intended the seal of the court must be attached, and that a scroll or private seal 688 of the clerk could not be substituted.”

I simply read it as to the point of the certificate of conformity. Now, I have, and your Honor has had, the question in a great many cases of the execution of foreign deeds, and where deeds are executed before a notary

public there must be either a certificate of conformity that these deeds are executed in conformity with the statutes of Illinois, or there must be proof that these deeds are so executed in conformity to the laws of that state. It is not necessary—it does not necessarily need to be certified, but there must be proof before they can be received in evidence. Now, nothing of the sort appears here and those are some of the objections which I urge to that deed.

Now, I will take up Exhibit 3. Now, when we come to Exhibit 3, if your Honor please, it was executed in 1892 and it purports on its face to be made between the Illinois Valley Coal Company of La Salle County and the State of Illinois, party of the first part, and the La Salle County Carbon Coal Company, party of the second part. I take it that the recitation in the preamble to the deed, or the clause which contains the name of the parties, does not aid the deed because the deed might in that clause pur-
 689 port to be executed by George Washington and signed by Thomas Smith. The statement of his name would not help it any.

Now, when we get down to the signature of the deed we find that this deed is signed “Allen Sheldon, vice-president Illinois Valley Coal Company.” That is all there is to it. If you will not deem it impertinent I would like to pass it up so you may see the manner in which the signature is made. (Handing paper to court.)

Mr. BUTTERS: What did you say the name was?

Mr. CHIPERFIELD: He signs himself on the deed “Allen Sheldon” and follows by the words “vice-president Illinois Valley Coal Company.” That is the entire signature to your deed.

Now, would it require citation of authorities under the long unbroken line with which your Honor is extremely

familiar, that those words as *descripto personna*. There is no question this deed does not purport to be executed by the Illinois Valley Coal Company and the name Illinois Valley Coal Company is not signed to this deed. And when you come to this certificate of acknowledgment you find that the certificate of acknowledgment is this:

“On this 14th day of October, A. D. 1892, before me, a notary public in and for said county, personally came the above named Allen Sheldon, Vice-Pres’dt. known to
690 me to be the person named in and who executed the above instrument, and acknowledged that he executed the above instrument, and acknowledged that he executed the same for the intents and purposes therein named.”

Now, that is your deed. That is all there is to it. He personally acknowledges that he executed—not even recites in the acknowledgment of what company he is vice-president, but he acknowledges that he acknowledged it—or that he acknowledged it for and on behalf of this company, but it is a personal acknowledgment and a personal deed which is signed by himself.

Then this deed is acknowledged in Michigan in Wayne County. There purports to be a certificate of conformity as follows: Have you the original of it so I can see if the seal is there? I have no doubt it is. I did not notice at the time if the seal was attached or not. It is that blue covered deed, Exhibit 3.

Yes, that is under seal of the clerk of the Circuit Court of the County of Wayne and it has a certificate of conformity, so I raised no question to that as in connection with this deed. It bears a certificate of conformity certified under his hand with the seal of the court.

The COURT: Let me see that, please. That is the orig-
691 inal, is it?

Mr. CHIPERFIELD: That is the original. I would be

very pleased to have you see that signature and anything else you may care to observe and look at. (Handing paper to court.)

Now, here is another remarkable thing about this deed, which in my judgment precludes it from being received in evidence as fee simple title. I don't think your Honor ever saw a deed like it. I know I never did, but then my experience is confessedly limited and my observation perhaps is not as broad as some others. But let me read how they attempt to describe the lands in this deed: "All of said lands and coal being in the County of La Salle, in the said state, for a particular description of which reference is made to the following described deeds conveying titles to the said Illinois Valley Coal Company, viz.: a deed of Charles G. Wicker and wife to the said company dated March 27, A. D. 1870, and recorded the 30th day of April, A. D. 1870. Also a deed from said Wicker and wife to said company dated December 5, 1881, and recorded the 14th day of the same month. Also a deed from the said Wicker and wife, dated March 1, 1884, and recorded on the 28th day of the same month, all in the records of the said La Salle County. Also two deeds of Horace White and wife, each dated the 20th day of March, A. D. 1865, and both recorded in said recorder's office on the 13th day of May, A. D. 1865."

Right here let me call your attention to the fact that is not true. In this case two deeds have been introduced in evidence; one is from Horace White and wife and the other is from Margaret White in her own right and Horace White, her husband. Assume, now, that those were the deeds referred to and I am going to dwell upon that in just a minute. I want to call attention while I am passing, while it is in mind, that that recitation is not true.

"Also a deed of Margaret Evans, dated the 9th day of

June, A. D. 1884, and recorded on the 28th day of March, A. D. 1885, in the same office.

693 “Also a deed of Henry C. Freeman and wife, dated November 16, A. D. 1871, and recorded on the 31st day of May, A. D. 1872. A deed from Mary Ann Leonard, dated April 25, A. D. 1870, and recorded June 20th of the same year. A deed of Morris Neustadt and wife, dated June 9, 1870, and recorded July 20th of the same year. A deed of Lyne S. Whitmore, dated March 1, 1872, and recorded May 31st of the same year. A deed of Lester Dolley and wife, dated March 4, 1865, and recorded May 13th of the same year. Also a deed of Racheal Neustadt, Morris Neustadt, Byron Watson and others, dated June 2, 1870, and recorded July 20th, same year. Also a deed of Hiram Holmes and wife, and Horace Holmes and others, dated March 28, 1887, and recorded April 14, 1890.” And it goes on.

Now, can this court say that any of these parties did not make half a dozen deeds on that day? Can this court say when the deeds were recorded? It may appear that a deed has been introduced bearing the same date and mark of recordation. But is there any evidence before this court to show that was the only deed made on that date and only time of recordation, and is this court going to jump at a conclusion and adopt the novel course of inserting the description, the legal description of premises in a deed by reference to some other deed which this court knows nothing of. It, to my mind, is a very remarkable thing.

694 Now, it will appear to this court, “Attest: F. O. Wyatt, Secretary,” if that is intended as one of the signatures necessary to convey this title, then there is no acknowledgment of F. O. Wyatt; none whatever. His name does not appear in the acknowledgment certificate and there is absolutely nothing to show that he ever signed or exe-

cuted this deed. Those are a few of the defects which exist with reference to this deed. I think there are others that could be pointed out.

Now, then, we come to Exhibit 4, this is a deed from Horace White and Martha H. White, his wife. It is more than thirty years of age, which I presume proves itself, and if that be true there is no need wasting any time upon that proposition.

MR. BUTTER: That is No. 4?

MR. CHIPERFIELD: No. 4. Now, No. 5, this is a deed which was referred to in the other deed, which is between Martha H. White, late Martha H. Root, wife of Horace White, and that is in the same position, that it is more than thirty years of age and I suppose is an ancient deed under the authorities.

Now, in Exhibit 6, there is a serious objection which I want to point out. Exhibit 6 purports to convey: "All of the west three-quarters of the southwest quarter of Section 23 in said Town 33, containing twenty acres, more
695 or less; also all the coal and coal mines and all other mines and minerals which are situate on or may be found in, under or upon the east half of the northeast quarter of the southwest quarter of said Section Twenty-three (23)."

You will note, if your Honor please, that when it commences to describe Section 23 it limits the estate that is conveyed in this manner: "Also all the coals and coal mines and all other mines and minerals which are situate on or may be found in, under or upon the east half of the northeast quarter of the southwest quarter of said Section 23, containing twenty acres, more or less, together with all mining rights and privileges, necessary to mine, dig, raise and remove said coal or other minerals from said premises, and all the occupation and use of said

premises convenient and necessary in and while so doing and also all right to the surface of said premises except so far as the same has heretofore been conveyed by Charles Todd to the Illinois Central Railroad.”

Now, there is an estate which is reserved and it is an uncertain estate. They reserve the fee simple title to this land and it shows merely an easement. It does not show title to the entire estate. It shows an easement in the right to use the coal under the surface of the ground. It does not rise to the dignity of a fee simple title to the
696 land, but simply shows an easement.

Then going on: “Also all of the northeast quarter of the northeast quarter of Section 27”—that 27 is not involved in this suit. And then conveying Section 22, and they use this language: “Excepting and reserving, nevertheless, from this conveyance, the interest in that portion of the southeast quarter of Section 22 lying northerly of the Illinois River.” Now, if I am not mistaken, all of the southeast quarter of 21 is involved in this suit.

Mr. BUTTERS: I think so.

Mr. O’CONOR: All of it south of the river and east of the river.

Mr. CHIPERFIELD: But all of the southeast quarter of 21.

Mr. O’CONOR: 21.

Mr. CHIPERFIELD: And 22. Well, those reservations are contained within this deed and it does not convey the fee simple estate that is described in the plaintiff’s declaration.

Now, when we come to the Dolley deed, which is Exhibit 7; this is executed before a notary public in the State of New York and there is no certificate of conformity.

Exhibit 8 is between Rachael L. Neustadt and Morris

Neustadt, her husband, Byron Watson and Laura Watson, his wife, Emeline Snow and George W. Snow, her
 697 husband, and the Illinois Valley Coal Company. It is executed on the part of the Neustadts—acknowledged by them before a justice of the peace in La Salle County. I take it perhaps that may be a sufficient acknowledgment without a certificate, because it is in the county where the land is located. Now, as to Mrs. Snow and husband, it is executed in the County of Woodford, but it does not contain the acknowledgment of Mr. and Mrs. Snow. It does not contain the clause which was necessary to be contained at that time, that there had been a separate examination of Mrs. Snow, and out of the presence of her husband.

Mr. BUTTERS: What is the date of that deed?

Mr. CHIPERFIELD: The date of that deed is June 1, 1870. And, if I am not mistaken, the act changing a married woman's—the provisions fixing the rights of a married woman and providing for a change in the certificate of acknowledgment did not go into effect until 1874. Do you remember, your Honor?

The COURT: No, I do not.

Mr. CHIPERFIELD: I do not, offhand. That is my judgment about it, but I can easily be wrong.

Then the other acknowledgment seems to be in form. Now, we come to the last deed, exhibit 9.

The COURT: The last one I had was 7.

Mr. CHIPERFIELD: This is 8, your Honor. The one I have just referred to from New York.

698 The COURT: That New York deed?

Mr. CHIPERFIELD: Yes, sir. Just one minute. Six was the deed from Wicker to the Illinois Valley Coal Company and No. 7, from Dolley and wife, was the New York deed.

The COURT: And what was 8?

Mr. CHIPERFIELD: Eight was the deed of another, Neustadt. I perhaps didn't say.

The COURT: You didn't change the number.

Mr. CHIPERFIELD: Perhaps not. The last one, the only objection I am pointing out there—

The COURT: No evidence of separate acknowledgment?

Mr. CHIPERFIELD: No evidence as to separate acknowledgment as to Mrs. Snow.

The COURT: You did not change the number.

Mr. CHIPERFIELD: No. Oh, yes, there is one thing further I want to point out there. They purport here to have a fee simple title to a part of Section 23 that is described in this deed. Now, here is the reservation, instead of a fee simple title in this deed. It is made subject to the right of way over the same of the Illinois Central Railway Company, as heretofore granted. "And then the party of the first part reserved the right to quarry stone, and remove the same, from said tract of land by teams or otherwise, also the right to lay a track
699 from the Illinois Central Railroad track to the quarry, for the removal of said stone. These reservations are made for the benefit of George W. Snow, Rachel L. Neustadt and Morris Neustadt, her husband, and Emeline G. Snow, wife of G. W. Snow, and shall continue only during their lifetime."

Now, then, we come to the last deed, Exhibit 9. This is the description which we find—and I would like to have any one tell me how he can locate this land—"The east half of the northeast quarter of southwest quarter of Section No. 23, Township 33, Range 1, East of the Third Principal Meridian, containing seventeen acres, more or less." It does not refer to La Salle County and it don't state whether it is north or south of the base line. There

is no distinguishing characteristic here. It don't even state it is in the State of Illinois. The description, in my judgment, is fatally defective. And this also is acknowledged before a justice of the peace, but as the property is located in the same county with the justice of the peace I think perhaps that is sufficient.

Now, those, if your Honor please, are the objections which we wish to point out, and we think those objections are serious and that they are very, very far from proving the fee simple title it is alleged in this suit, and as to the deeds which are executed in a representative of the 700 Illinois Valley Coal Company, they entirely fail to convey any estate whatsoever, in our judgment, and therefore we urge these objections.

Mr. BUTTERS: If the court please, the objections are quite technical and some of them, according to our view of the matter, would have weight were this a different kind of action. This is an action of trespass. Where the question of title is indirectly involved—

Mr. CHIPERFIELD: Would you object if I made one suggestion?

Mr. BUTTERS: No.

Mr. CHIPERFIELD: You must not lose sight of the fact there is a plea in this case that directly attacks your title.

Mr. BUTTERS: I recognized that fact when I made that statement. However, that plea is nothing more than a plea of general issue and the Supreme Court in the Zinser case so held, that it does not change the form of action, nor make anything triable that would not be triable if it was a general plea. Now, the rules of law that apply where the deeds are attacked or where a record is attacked collaterally are entirely different from where they are brought in issue in a direct proceeding. There

is a long line of decisions, and I say that because I have them at the office and can introduce them in evidence, but it is an elementary proposition, as we understand it, that
 701 when in a proceeding it becomes—or a challenge is made as to the sufficiency of a judicial record, or that an instrument that is going to be attacked or disposed of directly, in a direct proceeding, that the presumptions that prevail are entirely different in one case than in the other.

Here in this case it is said we must produce as the foundation for this Exhibit 1 the authority of the trustees of the estate of one Young.

Mr. O'CONOR: Pardon me, your Honor, while Mr. Chip-erfield makes a suggestion, it probably would be a good idea at the opening of court each morning and noon to advise the witnesses, so that none of them will stay in the room.

Mr. CHIPERFIELD: I would suggest this, if Mr. Butters will pardon me. I don't think, if the witnesses are to be excluded from the court room, it ought only to be confined to the time the jurors are absent from the room. If I wanted to do anything I would probably find a pretext to make an argument pretty clearly outlining some of my views, even though the jury was not present. If they are to be excluded from the room I think they ought to be excluded and called when we want them.

The COURT: I understand.

Mr. BUTTERS: It is said that we must produce the foundation of the authority of the trustees to execute
 702 this deed. That would be so, probably, if it was an ejectment proceeding, where the title was directly in issue, and was the issue that was being tried. The title here is only indirectly involved. Possessive right is all that is necessary to maintain this action. And while that would be true, we could maintain it if we only owned a life estate.

Of course, there would be a difference in that case, but in a case of this kind, where the issue is solely—where the sole issue is the damage to the entire estate. If in order for the defendant to make any defense it will operate as a defense to the action brought, the title must emanate from the one that brings suit. In other words, I mean this, the defendant cannot be heard to come in here and introduce a deed unless it emanates from the source under which we claim, and such as would divert and divest his right of action. But there is not a particle of that, because the testimony shows he went into possession under this deed. So there the same issue is not involved here, the same character of proof. The same presumption did not prevail as would if a direct attack was made on the deeds.

Now, he makes several objections here. The first one is, to Exhibit 1, and I will not take up all the objections which were made, but just briefly refer to those objections to which I think there is no great significance involved. The objection to the Henry L. Young deed is the fact that
 703 there was no authority showing the trustees were authorized by the court to make this deed. I think that is not available in this case on the ground that the presumption is, where the deed is not attacked directly, the presumption is it was executed with authority. The contrary would be true in a suit of ejectment such as the ones that were cited where the authority must be shown. It is further said, it lacks a certificate of conformity. Now, our statute is clear on that subject, I think. No, the objection was, it was acknowledged before a notary public in New York, and our statute makes the seal of a notary public *prima facie* evidence, without any certificate he has authority to take acknowledgments. In an affidavit taken in another state, if a notary public states in his certificate he has authority to administer an oath, that is all that

is required under our statute, and under our statute the seal of a notary public in a foreign state, and certificate, is proper.

Mr. CHIPERFIELD: Mr. Butters, unfortunately, I guess I did not make myself plain. I am not questioning the fact that he is a notary public.

Mr. BUTTERS: What is your point?

Mr. CHIPERFIELD: My point is this, it is not certified to be in conformity with a deed of the State of New York. His official character will appear from his seal.

704 Mr. BUTTERS: The objection, as I understood it, was that it being—the deed was, I think, an ancient deed, too.

Mr. CHIPERFIELD: No, that was '83.

Mr. O'CONOR: It is twenty-nine years old.

Mr. CHIPERFIELD: But it is not thirty. The law requires thirty. Just as bad as a man one day too young on the day of election.

Mr. BUTTERS: There is no statute—

Mr. CHIPERFIELD: The rule is so well settled.

Mr. O'CONOR: It says "about thirty years."

Mr. CHIPERFIELD: No, it says thirty years.

Mr. O'CONOR: Some of the decisions have said forty years.

Mr. BUTTERS: If it conforms to the laws of this state, certainly there can be no objection to it. Now, these cases which Mr. Chiperfield read are all ejectment cases. That is, all that I have seen. I know of no case he has read, that is directly—where these questions have been raised collaterally.

Now, that further objection that is made to Exhibit 1, that the introduction of the deed in evidence will create—that the proof will be different from the allegations in the

declaration, in that there is other property described in the deed from the property that is contained in the declaration, there are certain reservations made in some of
 705 the tracts. Now, we cannot prove all our case at once. There is not any way I know of, that necessitates putting in all the proof at one time. If it is true, there is some piece of property on which we rely to recover damages that is not contained in this deed in full fee simple title, but that there is some title conveyed by this deed, it would be competent evidence and it would be competent evidence anyway for the purpose of furnishing a description. The testimony here is that the Coal Company was in possession of all this land described in the deeds, and for that reason it would be competent. But the mere fact that it does not describe all of the property, or that the deeds together might not describe all of the property, that a certain acre here and there was reserved, on part of the fee simple title, that would not be a reason why the deeds would not be competent evidence to prove whatever title was conveyed.

Now, there is a certain mixture in Exhibit 4—no, Exhibit 1, refers to certain property which is conveyed by other deeds. Now, I don't know whether the court—

Mr. CHIPERFIELD: Exhibit 3, Mr. Butters.

Mr. BUTTERS: Yes. To get this clear, the Illinois Valley Coal Company received deeds for all this property from various persons. It is embraced in seven deeds of different dates. Now, then, when the first deed was made, from the Illinois Valley Coal Company to the La Salle
 706 County Carbon Coal Company, it didn't go—

Mr. CHIPERFIELD: Excuse me, Mr. Butters. There are only six deeds.

Mr. BUTTERS: You are right, six deeds. Now, your Honor, when the Illinois Valley Coal Company conveyed

to the La Salle County Carbon Coal Company, in place of writing out the description of all that property, as conveyed by the deed, they said such property, as conveyed by such a deed, to the Illinois Valley Coal Company by such persons. The only fly speck they have pointed out in that deed along this line was that the name of Martha White, in one of the deeds, is given ahead of her husband, but it is nevertheless of those two people. I don't know whether there is any rule of law that would despoil the instrument because they happened to use the wife's name first. That is the same thing and that is all the deed said it was. It said the same property conveyed by Martha White and her husband and it turned out in the deed Martha White's name was second. It is not a requirement of law that the husband's name come first, and at any rate, it is a matter of defense which would not bar the instrument in evidence here upon which to predicate a title.

Now, suggestions were made that a lot of these deeds,
 707 that they did not convey the entire fee. I don't understand that is an objection that has any weight at all, because we cannot try our lawsuit all in a minute, and if they were true and if we saw fit in the end to abandon a recovery for such titles as we didn't have, that can be the only penalty that would affect the plaintiff. Now, it may be we have not any right to recover for the railroad land. I do not understand we do have a right to, but that does not affect the deed or its competency to sustain proof as to the other portions of it. Now, the objection is made there was no separate acknowledgment of the wife in the deed of 1870. Now, that would be a good objection in an ejectment suit, if it was not an ancient deed. I don't know but what it would be a good objection anyway. I am not certain about that proposition. But that is an ancient deed. The proof necessary to lay the foundation

necessary to introduce ancient documents is, as Mr. Chip-
 erfield has correctly stated, that it must be taken from
 the archives where it is known to have been under the cus-
 tody of the grantee. Possession of the same to a certain
 extent shows it was an important paper. This is a deed
 of 1870 and it is not important for us to show in an
 ancient deed whether it was acknowledged at all or not.
 It purports to bear the signature of the wife, so I don't
 understand there is anything in that objection. There
 708 is no point made on the fact these deeds were acknowl-
 edged before a justice of the peace and I don't under-
 stand there is any objection other than to the form of the
 acknowledgment.

Mr. CHIPERFIELD: No, I am not raising any objection.

Mr. BUTTERS: The form of the acknowledgment, as Mr.
 O'Connor has just read, the acknowledgment is in accord-
 ance with the law of this state. If it is in that form, then
 it would be a foolish objection to say it was not acknowl-
 edged in proper form.

Mr. O'CONNOR: I haven't but a few words to say, your
 Honor. Now, it seems to me this whole thing proceeds
 upon an erroneous basis. This Sanitary District is in
 this court as a trespasser and it is not the first case in
 which a plea, such as has been filed here, has been filed
 in cases of similar character. In fact, this plea has been
 filed in all these cases, so far as I know.

Mr. CHIPERFIELD: Let us try this case. I think that
 is the real way.

Mr. O'CONNOR: Your Honor, I cannot make a sugges-
 tion—

Mr. CHIPERFIELD: What has been done in any other
 case I insist is not a precedent. All the way through in
 this case we are hearing what has been done in other
 cases, and I want to protest against it.

709 Mr. O'CONOR: You are very nervous for an old warrior. If we make any suggestion that he doesn't know anything about it, he takes exception to it, but yet he tells the court himself how little he knows and how little experience he has had.

Now, in the Zinser case, this same plea was filed and demurrer was interposed to it, and demurrer was sustained. Appellant filed a plea denying ownership in appellee and a demurrer was sustained thereto. The plea amounted only to the general issue and the demurrer was properly sustained. The defendant in this case has come into court and filed an issue of non-ownership and issue has been joined upon it, but that does not raise a thing for the consideration of the court other than what would have been raised by a plea of general issue, and if a demurrer had been raised to that plea it probably would have been sustained. At any rate, it should have been sustained.

Now, as I say, this District is in this court as a trespasser, and that is all. And I think it is the petition that should first be considered when we come to decide the question as to why these deeds are being offered, and as to why they should be admitted.

Now, I want to call the court's attention to the case of the City of Morrison *vs.* Horace Hinkson, in the 87th Ill.,
710 at page 587. It is a short case: "This is an action brought by appellee against appellant for injuries to his residence, and operated by steam, water works for raising water for the use of the city, by which the use of the property of plaintiff was rendered less valuable, and the value of the property impaired.

"Appellee, being the owner of the ground adjoining the street, built his residence thereon several years before the city commenced the construction of these works, and occupied the same with his family, and still continues

to live there. In 1873, the city erected in the street a water tank thirty feet in diameter. This tank gave way and did the plaintiff some damage which was adjusted and paid by the city. In 1874 the city rebuilt the tank and put in a steam engine and thereby operated a pump. The works are located about forty feet from plaintiff's house and some fifteen to twenty feet from the line of his ground. By the use of this engine (especially when the wind is in the east) smoke and soot are passed in and upon the residence to such a degree as to interfere seriously and materially with the comfort of the occupants, and so as to injure and impair the value of the property. In the Circuit Court the verdict and judgment were for the plaintiff and defendant appeals."

- 711 The court decided that adversely to the rights of the city, saying it could use the streets for the ordinary purpose of travel and purposes incidental thereto.

"It is insisted that the grievances must be redressed, if grievance it be, by a public prosecution, and not by a private action. If the sole cause of complaint consisted in the obstruction of the highway, where the plaintiff had suffered no special damages from the obstruction, this doctrine might be invoked, but it has no application to the case here presented."

Now, this action in this case I have read from is similar to the action instituted here, and all it is necessary for the La Salle County Carbon Coal Company to do in this case is simply what the court required in the other case. "Proof of possession claiming title in fee is *prima facie* proof of such title."

Now, there is no issue on the question of title here. The Sanitary District has no right to question, if the court please, the title of this plaintiff, or, rather, if questioned, as far as we have to go, is to prove we are in pos-

session and claim title in fee. Now, that is the whole situation and it has been decided by our courts. I do not presume it is entirely competent here to say to the court what took place in the Zinzer case or what questions were raised in the Zinzer case, except so far as they appear in the opinion. Now, then, your Honor, we offered the deeds to this company. The first deed we offer is from the trustees of the estate of Henry Young. Now, this deed is not in issue. We offer this deed to show whatever the deed is, whether it is a quit-claim deed or otherwise, to show that we claim that described land, and we will follow that up by proof that since the date of this deed, the 8th of November, 1883, that we have been in possession of the land and have been paying taxes upon it. Everything that is required under the law in an action of this kind is that we prove we are in possession and claim title in fee simple. We don't have to prove a fee simple title. Every case that Mr. Chipperfield called to the attention of the court was an ejectment, where the issue was fee simple title to the land. The defendant is standing in this court as a trespasser, and nothing better. Now, Exhibit 3 is this deed from the Illinois Valley Coal Company to the La Salle County Carbon Coal Company. That exhibit covers everything in so far as Section 21 is concerned. Exhibit 3 covers everything else that is involved in this lawsuit, but it does not refer to descriptions specifically. Consequently, it has been necessary to introduce these deeds, not for the purpose of proving the execution of the deeds. It would not make any difference how these deeds were executed. If these deeds were simply signed by the grantors it would be sufficient for the purpose of this lawsuit. They are simply being introduced as a matter of identity and description. Simply to give the description referred to in this deed, through which the grantee, the Illinois Valley Coal Company, se-

cured title, which it afterwards conveyed to the La Salle County Carbon Coal Company.

These deeds referred to in Exhibit 3—every one of them except the deed from Wicker and wife. That is dated 1885, but every other deed, your Honor, runs back from 1865 to 1870. These cases Mr. Chipperfield has presented to the court are not new to us. They have been considered by us just as thoroughly as they have been by him in this and other cases along this same line, and we simply introduce these deeds, if the court please, for the purpose of showing that since the date of these deeds we have been in possession of that land and claim to own it in fee simple, and afterwards, and during that time we have been paying taxes on the land.

Mr. CHIPPERFIELD: Will you excuse me a minute?

Mr. O'CONOR: Yes, sir.

Mr. CHIPPERFIELD: If this is the only purpose for which these deeds are offered, for the purpose of showing what Mr. O'Conor has just said, and are not offered for the
714 purpose of proving fee simple title, I say our position is wrong. I concede that. If that is the only purpose for which these deeds are offered, then I don't care to urge these objections any further.

Mr. O'CONOR: I won't go that far. My position is that is not the sole purpose for which these deeds are introduced, nor would it be necessary to introduce the deeds for that purpose. We are entitled to the admission of these deeds for the purpose of description. These deeds do cover land that is not involved in this suit, but there is not a deed we offer that does not cover some of the land that is in dispute. We will identify the property that we claim has been damaged, and some part of that property will be found to be described in some of the deeds we have offered in evidence here. Now, these deeds

are competent for that purpose. These deeds are competent to show at what time this company claimed it became the owner of this land, since which time it has held it, as it claims, in open and adverse possession, paid taxes upon it, and I will submit to the court that under the decisions, that is, as far as we have to go, and the deeds are competent for that purpose. These deeds are all of colorable title. There cannot be any question about that. So far as the execution of these deeds is concerned, it is not a matter that would be sufficient legal objection to
 715 keep these deeds from going into evidence for the purposes for which we want them introduced.

MR. CHIPERFIELD: May it please your Honor, I want to make it very emphatic upon this record and at every stage of this proceeding, that the question of title is involved. We are disputing the title of the plaintiff to each and every tract of land that is involved in this proceeding. We assert that they have not title to that land.

I think it will not be a loss of time—and I often think that we do seriously try the patience of the court by referring to things that have been stated before, but in order to present the matter, I want to call the court's attention to this declaration. This declaration avers in the first count that they were the owners and in possession of certain lands and premises in the County of La Salle, State of Illinois, "described as follows."

Now, it is true that possession is coupled with the ownership, but the larger averment is always the controlling averment, and they aver that they are the owners of this land. Then when we come to the concluding sentence of the first count of the declaration, we find they make this averment:

"And the plaintiff avers that on, to wit: the day and year last aforesaid, and on divers dates prior thereto,

the said lands and premises of the plaintiff were over-
 716 flowed, submerged and rendered wet and unprofitable by
 reason of the construction, enlargement of channels, ditch
 drains and other outlets by the defendant in the Coun-
 ties of Cook, Du Page and Will, in said State of Illinois,
 and by reason of the premises the lands of plaintiff afore-
 said were diminished in value to the extent of two hun-
 dred thousand dollars.”

Now, the other counts are the same. I don't mean the
 language is precisely the same, but the theory is iden-
 tical. It doesn't require the faintest particle of argu-
 ment, your Honor, to make very plain to your Honor
 that this is a suit for injury, permanent injury to the
 lands, and to recover the difference in their market value,
 which can only be predicated upon ownership. I don't
 want to be misunderstood. I don't mean to say if they
 were a tenant they would not have any cause of action.
 And I don't mean to say if they were a life tenant they
 would not have any cause of action, but the cause of ac-
 tion in either of those two cases would be the injury to the
 estate they owned and that would not have anything to
 do with a permanent injury to the entire premises. They
 could recover if they were injured. I don't mean to be
 heard to say they could not, but the only person who can
 recover in a suit for all the damages to the premises is the
 owner of the fee, and that is alleged in each and every
 count of this declaration, and it is put in issue by the
 717 general issue.

Now, in the Zinzer case, and so far as the trial of that
 bill was concerned, I say the attorneys or the court were
 extremely unfortunate. I had nothing to do with the case
 and I knew nothing about it except what I read in the
 opinion. I think my name is signed to the brief in the
 Appellate Court. I am not sure but we wrote some of
 the argument. I had nothing to do with the trial of

the case. It is a very unfortunate situation to be found in any court of the State of Illinois, but let us take this opinion as it appears. Now, all this opinion holds is this: That the title was put in issue by the general issue. Why is not that true? The general issue put in issue the trespass on the case as a very material allegation. Everything is traversed and denied by that general issue and the plaintiff has to prove each and every fact. It has been stated that in other cases other action was taken. I don't know as to that. I have a number of cases that I could refer to, cases where things have gone against the plaintiff repeatedly. The question here is what has been decided in the various courts in the state upon this point. Now, there is a case here in the 85th or 89th Illinois, where a person was doing an unlawful act. Why, this is not an unlawful act, your Honor, the overflowing of these lands, not in any sense of the word. If there is any act
 718 that has been held by the decisions in this class of cases to be a trespass, and not an illegal act, it has been the flowing of the water in the Illinois valley. I don't mean to say that if injury has been caused that there cannot be damages recovered. That is a part of the act, but it is one of those things which in law is regarded as lawful and proper, as distinguished from a trespass. Now, counsel has cited this case—

Mr. O'CONOR: That was a municipal corporation.

Mr. CHIPERFIELD: Why, yes, of course it was. A municipal corporation doing a wrongful act that it had no business to do.

Mr. O'CONOR: Is it more wrongful to flood them with soot and smoke than it is to flood them with water? It was a permanent institution.

Mr. CHIPERFIELD: No, it was not anything of the kind. It was not a permanent institution. So far as the consequences are concerned—I want to be fair. It may be just

as bad or worse, to put water on than soot; perhaps it is worse. But one of these acts is regarded as lawful by the State of Illinois and the other acts were done by a municipal corporation without right and you could not have had a recovery for permanent injury in that case, because the injury would have to be recurrently sued for, no matter whether it was done by an individual or by a
 719 corporation. It would be regarded as a nuisance and would be brought to an end.

Now, let us make this case as plain as possible, and I don't want to take any more time than is necessary on this. There are two lines of authorities that hold this: That where an act is done by a municipal corporation in pursuance to direct authority, or by a corporation in pursuance to a permanent plan of improvement, it is regarded as a permanent injury. And if it is within its charter right it is regarded as lawful, although the injury may be permanent and there may be damages recovered.

The case of *Wright vs. Centralia* (?) in the 85th Illinois, the case of *Loeb vs. The Illinois Central* in the 116th or 118th Illinois. There is no need to cite those cases to your Honor, because you are thoroughly familiar with them, but the Sanitary District cannot be regarded in this case as a trespasser, because it is not. It is a subdivision, a political subdivision, of the State of Illinois, doing a government act, and in doing a government act, by the authority of law, possibly inflicting damages. If so, they are responsible and they must answer, but they do not stand in the position of trespasser. They stand in the position of one clothed with lawful authority, with specific and direct authority from the State of Illinois. So, it is not like a person who is an invader. That being true, we put in issue the ownership of this property, and
 720 we deny at each and every stage, from opening statement

to final argument, that these people own this land; that they are the lawful owners and also that they have the right to possession.

Counsel has stated that if they have the right to possess they have the right to recover. That is true. But they cannot have the right to recover for permanent injury to these lands. I don't mean to quote his words exactly, but the thought was they were entitled to such damage as they could prove injury had been done to the lands. They are entitled to recover for damages, if damage has been done, but the permanent injury to those lands can be recovered by reason of the fact they are the owners in fee simple of those premises and not any other ground whatsoever. It might have been an action in some other form, but when they elect to take this form, this is the form that must stand.

Now, we put in issue this ownership and then they say all of these deeds, as the record will show, that they don't claim these deeds to prove ownership; "We don't claim they are good in themselves, but we do put them in to show the time we took possession and the manner in which we took possession, and we are in occupation now, claiming ownership." That does not rise to the dignity of an
 721 allegation that is made in the declaration. They say that those deeds are sufficient to establish title. We say they are not, your Honor. If title is proven, if it is necessary to be proven, it must be proved in the regular way. They say this is a collateral attack. Let us see, for a minute, if it is a collateral attack. As the very basis, as the foundation stone upon which they build their case, they say: "We are the owners of the fee simple of these premises, and we are entitled to recover for all the damages." That is the very foundation stone upon which they build their case. How can that be called collateral? If that is not a direct attack upon their ownership. They come in

and say to us: "You pay us the money. We claim we are injured because we own these premises," and we reply: "We have not injured you and you do not own the premises." With that plea interposed and standing upon the record in this case, there can be no recovery until their allegation is proved by a preponderance of the evidence. If it is necessary to prove ownership, it must be done according to the law. Either it is necessary to prove ownership, and if it is necessary to prove ownership, it must be proved in one of the ways known to the law. That is all there is to it. It either is necessary or it is not necessary, and if it is necessary, less than legal proof will not do.

722 It seems to me that is all I care to urge upon this proposition. There is nothing to be indulged in by way of presumption. There is nothing to be indulged in by way of favor. When I say favor, I don't mean favor extended by the court, but there is nothing to be indulged in because this company is suing the Sanitary District. I say that because I am in serious doubt—and I don't mean before your Honor, because that would not apply to your Honor, but I have often thought that every rule of law was to be merely nominal, because it was the Sanitary District of Chicago. It has not been so before your Honor and we urge the right the law gives the defendant. "If you are the owner of this you must prove it and if you are required to prove it you must do it according to law."

These objections we have advanced have not been advanced in a spirit of captiousness. Surely it is not captious to say when a man executes a deed without any authority it is not good title. Surely it is not captious to say when a corporation executes a deed *descripto personnam*, without any acknowledgment on the part of the corporation, surely it is not too much to say that it is not a valid deed.

Now, the question of reservations in the deeds to these lands, surely it is not too much to say they do not convey the fee simple title. If they do not need to prove title there has been a waste of time for which we ought to beg the pardon of the court for not knowing the position, but if they do, they have got to prove it and it is not to be guessed; it is not to be presumed; it is to be proved in the ways known to the law.

Mr. O'CONOR: I thought Mr. Chipperfield was going to read this case.

Mr. CHIPPERFIELD: I will be glad to read it, if you want me to. I was willing to take your statement as being correct.

Mr. O'CONOR: I thought you misunderstood the law, what the law was in regard to the trespass cases.

Mr. CHIPPERFIELD: Here is the only way we misunderstand each other. I am not finding fault with you for your opinion. We misunderstand each other as to what is a matter of right, rather than what is a matter of wrong. I contend this case now comes under the class of cases as the Beidler case, and a long line of cases.

Mr. O'CONOR: We are right with you on the Beidler case.

Mr. CHIPPERFIELD: All right.

The COURT: You think this question is not one of perfect title, or the superiority of the title. They think the question to be determined by an inquiry is as to whether this defendant is a trespasser or not. No question but some of these deeds are defective when standing by themselves. I think that ordinarily persons making a deed in a representative capacity are obliged to prove the capacity of the one executing it before it can be treated as sufficient in law. It is very manifest, also, that the deed from the Illinois Valley Coal Company is not in the usual

form and it is very questionable whether it is entitled to be treated as the deed of that company, because of the way it is executed. It may be there are others less manifest, less decided imperfections, in some of these deeds; likely there are. And it is likely, too, that if these deeds were offered in and by themselves and standing alone, that the objection would have to be sustained, or it would be error not to. I really believe that is true, that if the only proof offered by the plaintiff of its ownership or title were those deeds, I doubt whether these deeds should go to the jury. I think, however, they are evidence tending to prove the plaintiff's case, the same as possession is evidence tending to prove; the payment of taxes is evidence tending to prove, and I think that when all the facts in support of this offer are taken together, then it is a question for the court and jury to determine, whether

725 the ownership claimed in the declaration has been established or not. Possession alone does not entitle a person to recover for permanent damages. Possession must be in good faith. I think these documents are evidence of the faith of the plaintiff's claim. I think they are admissible in connection with the claim of possession or claim of the payment of taxes, and should go to the jury. And then, when all of the evidence is in, it is for the jury to determine whether title has been made out or not. It is not a question of superior title. It is not a question of defect in the evidence of title. That is not this question. It is true that the plaintiff's measure of damages and right to recover is limited by the scope and extent of its ownership. I think the exceptions and reservations in these different deeds, to which the court's attention has been called, do not create a variance. They may create an embarrassment on the part of the court in instructing the jury on that subject, but I am not able to see that they would create a variance. It may subtract that much, per-

•

haps, from the plaintiff's claim. It will operate, perhaps, to exclude that part of the property or any claim on the part of the plaintiff for damages. I rather encouraged this discussion on these deeds for the reason that I wanted information about them; not only because of my ruling now, but I wanted to inform myself as to the balance of the case. Ownership is one thing and title or evi-
 726 dence of title may be another. The deeds may not be complete in themselves, but any of them may tend to prove the question, and I think it is plain, as far as what I have to do now is concerned, that they do tend to prove the plaintiff's claim, and that ought to be sufficient for the present for the court.

I think I will overrule the objections. Call the jury in, Mr. Bailiff.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

727 (Whereupon the jurors resumed their places and the following proceedings were had in their presence):

Cross-Examination of the Witness Obediah Hicks read by Mr. Sullivan (for Mr. Chipperfield).

There is no difference in the Desplaines River above Norton's mill now than from what there was from 1870
 728 to 1890. The controlling works are a little above Norton's mill. I have seen the bed of the Desplaines River opposite Lemont. I can't give the date now. I was passing through on the train. It was a short time after the Santa Fe road was constructed. It would be over ten years. I don't think I observed it only once since then. I passed there once since, driving. There was very little water at that time. Some years ago there was two dams here at Joliet. One at Jackson street, known as Dam No. 1 and another at Jefferson street, known as Dam No. 2.

729 The dams were just above where the bridges at Jackson and Jefferson streets are now located. I don't think any point of them would exceed one hundred feet from the dam. When I spoke of skating I meant between the dams. These dams were taken out six or seven or eight years ago.

Up to the time the dams were taken out ice would form in the basin between the two bridges. There is no basin there now to hold the water. I have been over the land between Jackson street and the controlling works. In my opinion the slope of the land between the controlling works and Jefferson street bridge is something over forty
 730 feet. Those dams at times held the water in pools. When I spoke of the water being offensive, I meant there was a stench. You didn't have to get near them. It was noticeable quite a distance away. When you got down to the water itself you could notice it was foul water. It could be detected by the color as well as the odor. It has not entirely disappeared, but a great change came when the water came from the improvements in the Sanitary District Canal. You could come within miles of it now without detecting the odor, and when you come up to it you notice a very decided change in the appearance of the water. It is for the better. It is not pure. It has the appearance of fairly pure water. It has the appear-
 731 ance of fairly clean water. And that condition has existed since the time the Sanitary District turned the water down this way. There was no current except at times of high water between the bridges up to the time the Sanitary District turned the water this way. The bed of the river to the south of Dam No. 1 was very foul. Ice did form there, but not to the extent it did before the foul water came. When we had only the river then every winter ice formed. I mean previous to the time water came from the Illinois and Michigan Canal into the Des-

plaines River. When I speak of the river water, I mean the Desplaines River water. In 1869 or thereabouts, the only water at this point was the water of the Desplaines River, until it reached the mouth of Hickory Creek. Between 1869 and '72 the waters of the Illinois and Michigan Canal were turned into the Desplaines River above those two dams and the water coming down from the Illinois and Michigan Canal is the water I designated as foul water. The foul water was noticeable during the time the Illinois and Michigan Canal was turned into the Desplaines River, with the exception of one season. There was one season previous to the time of the Chicago fire when the water between those two dams was in good condition, so we caught fish in there. After the Chicago fire some two weeks, the first rain came and flushed the sewers in Chicago into the Chicago River. The Chicago River, at the time of the Chicago fire, emptied into the Illinois and Michigan Canal. I know it from current report and from the water we received from there. Prior to the Chicago fire the Illinois and Michigan Canal was deepened. The connection between the Illinois and Michigan Canal and the Chicago River was made at Bridgeport. I saw it at Bridgeport. The river didn't have any current at that time. The current in the Chicago River was away from the City of Chicago and the sewerage would have been carried towards the lake instead of towards the Illinois and Michigan Canal. It was merely a conclusion that a couple of weeks after the fire, that the Chicago River started to run toward the Illinois and Michigan Canal rather than towards Lake Michigan. I cannot fix the year as to the time at which the deepened channel failed to supply sufficient water and pumping devices were resorted to to draw water from the Chicago River, for the purpose of supplying current to the Illinois and Mich-

- igan Canal. I think it is true they have been pumping water from the Chicago River ever since shortly after the Chicago fire, into the Illinois and Michigan Canal. All the water that comes from Chicago into the Illinois and Michigan Canal is turned into the Desplaines River before reaching Jackson street in Joliet. Judging from the water I think it is true that the water sent down through the Illinois and Michigan Canal is drawn from a part of the Chicago River and has not been improved.
- 735 I can very slightly detect the same odor in the canal that I could prior to the time the Sanitary District turned its waters into the channel at Joliet. The water that goes through the Illinois and Michigan Canal is mingled with the waters of the Desplaines River and the Chicago Drainage Canal in the City of Joliet. Above Lockport there is no such mingling of the waters. Above Lockport the water that comes from the Illinois and Michigan
- 736 Canal is as foul as it was years ago. It was the last time I saw it, a few weeks ago. The Sanitary District water has not purified the waters that come through the Desplaines River. The water that comes through the Illinois and Michigan Canal is very much improved. I can notice the difference between the waters of the Illinois and Michigan Canal above Lockport and the waters of the
- 737 same canal this side of Lockport. I noticed the waters of the Drainage Canal before they mingled with the waters of the Illinois and Michigan Canal. There is some odor to it. At sight, it is apparently all right. At Lockport, I speak about. The masonry walls were put in at the time of the construction of the drainage channel. The river is wider at Jackson street since the walls were put
- 738 up. I see the river very often south of the Jackson street bridge, down as far as McDonough street. Its average width is wider. The walls have not narrowed the river. I think it would average between two and three feet

deeper; that is, in addition to what loose stone there is lying there on the channel. I have observed the elevation of the water as I cross this bridge. I don't think the water surface is lower now than prior to the construction of the bridge. I think the water level is very near the same. I cannot judge absolutely for the reason that the structure of the walls and the back filling has changed the condition of sight there. My impression is that the
739 water is fully as high now in relation to adjacent property as before the channel was deepened. The current is much more rapid. I used my judgment as to the current in miles per hour. Under the Jackson street bridge, I can't say. I think I was asked between Jackson and McDonough street and my answer was four to six miles an hour. That has been since the water has been turned through the Drainage Canal. Before that at times there was no current. At times when there was a current it would vary so much, from nothing to several miles an hour; from two to four. When there was high water the current between the bridges that were referred to as the Jackson street and McDonough street bridges would go
740 as fast as four miles an hour. I know parties that are interested in suits against the Sanitary District. I have heard of claims now pending in Will County against the Sanitary District of Chicago. I know parties to such suits. I am not interested as much as you are in any such suits or lands. I have been a witness in litigation in which the Sanitary District of Chicago was a party;
741 in two instances for the Sanitary District; possibly three. I never worked for the Sanitary District. I never was employed by them except as a witness. At those times I don't know that I was called by Mr. O'Donnell. I have not talked this matter as to damages over with Mr. O'Donnell. Mr. O'Donnell asked me if I was familiar or had been with the condition of the river and I told him

I had, and that is all the information I have given Mr.
 742 O'Donnell whatever, except what I have given here to-
 day. I answered a question in the first part of my cross-
 examination and in so doing stated that the slope of the
 land from the controlling works south was in the neigh-
 borhood of forty feet. It doesn't terminate until it
 reaches Jackson street. When I referred to a forty foot
 slope I meant between Jackson street and the controlling
 works, including the fall at Jackson street. There is a
 decided fall between Jackson street and Lake Joliet.
 Lake Joliet is two and a half miles south of the City of
 Joliet. It is a wide place in the river southwest. There
 743 is a pool formed southwest of Joliet that we call Lake
 Joliet; at that point the water assumes a practically
 level condition. The land does not; on each side the land
 varies; there is not a regular slope. At present there
 is a current through that lake. The lake is about seven
 miles north and south. I know the current is very rapid
 down there; not rapid at the outside; the current is in
 the channel; two or three miles, I should say, in the
 lake. The widest point is between 160 and 200 rods.
 744 The east, southeast bank curves gradually towards the
 west, widens out towards the west at this point that I
 speak of at the head of the lake and gradually widens
 out to something about a mile below. I should say the
 average width was a hundred rods. There is a part of
 it very shallow. The current is mostly confined to the
 channel at present. Formerly it was sixteen to twenty-
 two feet deep in the channel. It is filled up with deposit
 since the Sanitary District waters have been turned in.
 I do not know that it is two or three miles an hour. I
 think it is, but it is not easily judged. It is rapid op-
 745 posite Rock Run. I would not say that the average cur-
 rent of the lake was two or three miles an hour. I can-
 not give a judgment as to the average width. I cannot

746 give the average depth of the lake when the waters of
 the Sanitary District were turned through the controll-
 747 ing works. There was no perceptible current at that
 time. I don't know that there is any additional water-
 shed under the Drainage Canal away off in the eastern
 part of the county may be attached or may have been
 turned into Hickory Creek. I don't know that it has
 been done but it may have been. If it is it is only a small
 district up there. Hickory Creek has the same water-
 shed now that it has always had. The Sanitary District
 has added water to the mouth of Hickory Creek by back-
 ing it up. Hickory Creek does not discharge any addi-
 748 tional water. I believe it to be possible that waters from
 the Sanitary District to the north and east of Joliet to
 be let into Hickory Creek and from Hickory Creek into
 the Desplaines River. I refer to the Drainage District
 somewhere in the east part of the county. I never saw
 it. I am not sure that it even exists. Perhaps water has
 been backed from the Sanitary District in a northwest-
 erly direction up that creek for thirty rods. The influ-
 749 ence of the waters that I say come from the Sanitary
 District are noticeable only about thirty rods.

Re-direct Examination of the Witness Rollin L. Reed.

(Read by Mr. O'Connor.)

The Chicago Drainage District or Drainage Board
 turned the water into the Desplaines River at the Bear
 750 Trap Dam between five and six years ago. It has been
 running all the time so far as my knowledge goes. I
 have not been fishing in Lake Joliet since the waters were
 751 turned in. I ceased fishing in Lake Joliet because there
 752 were no fish to catch. I know of the deposit being made
 in Lake Joliet by the waters of the Sanitary District, by
 realizing the difficulty of running the boat over it, wher-

ever I attempted to navigate it, except in the channel. I attempted to navigate perhaps the middle third of it. I
 753 refer to Lake Joliet. I don't know how much deposit I have discovered.

Re-cross Examination of the Witness Rollin L. Reed.

(Read by Mr. Sullivan.)

There was water enough in Lake Joliet for fish to swim in after the deposit was made. I did navigate Lake Joliet prior to the time the Sanitary District turned the waters in over the Bear Trap Dam, parts of it, many times. I say that I know the trustees of the Sanitary District turned the water through the Bear Trap Dam five or six years ago, by report, newspaper accounts and seeing the water going over the dam; I knew it had been done; looking at the water would not give me any information as to who turned it in. My knowledge is based purely upon hearsay evidence.

(Signed) ROLLIN L. REED.

754 Adjournment until Friday morning at 10 o'clock.

The plaintiff offers in evidence the deposition of T. E. Marsh, as follows:

T. E. MARSH:

Direct Examination of the Witness T. E. Marsh.

(Read by Mr. O'Connor.)

My name is T. E. Marsh. I reside in Joliet; have lived there since 1849. At the present time I am in the shoe business. I keep a store on Chicago street.

755 I have resided on the west side since '49. Since I was old enough to observe it I have been familiar with the

Desplaines River between Lockport and Lemont and through the City of Joliet. In the year 1895 to 1900 I was living on the west side, at 306 North Broadway. Before the recent changes were made in the river I have observed its condition in the City of Joliet in dry times.

756 The condition of the river during the period prior to 1900, in dry seasons, both winter and summer, depended on the pumping of water in Chicago. When they were

757 not pumping there was comparatively no water going over the dam at Jefferson street in dry seasons. I observed that condition prior to the deepening of the canal; in 1871 the condition of the river at Jefferson dam, there

758 was the same uniform flow. I don't know, during the time subsequent to 1870 and '71 about what depth of water was in the river below Jefferson street dam in dry times. It all depends upon the pumping. If they were not pumping we had comparatively no water; if they were we had water. I don't know that I can tell about how many inches of water was going over the dam at that time; there was no great volume of water. I saw the river above Lockport between 1870 and the time of this new improvement. The condition of the river above Lockport since the first deepening and until the second improvement was made, in the driest times, was that a

759 person could walk across dry shod by stepping from stone to stone. After the establishment of the Santa Fe Railway I have noticed the condition of the river immediately opposite the City of Lemont, in dry seasons. It

760 was like a small creek; no water there to speak of; nothing to speak of.

Cross-Examination of the Witness T. E. Marsh.

* (Read by Mr. Sullivan.)

I am not in any way, directly or indirectly, interested in any litigation against the Sanitary District; no inter-

- est whatever. I have been acquainted with the Desplaines River since I was old enough to know anything. I was born in '49 and have known it all my life. I have known this stream since 1855. In dry seasons the Desplaines River would get very low, prior to 1870. I do not
- 761 know what constitutes the watershed of the Desplaines River and what streams or rivers are tributary to it. What I mean to say is that when there was no rainfall in or upon the watershed of the Desplaines River, the stream would get very low. I do not mean that the stream ever got absolutely dry. There was always more or less water. I don't know whether it is true that the lowest recorded flow of the Desplaines River, covering a period of forty or fifty years, was fifty cubic feet of water per minute. I don't know that that statement is not correct. All that I mean to say is that during these dry seasons the river would get very low. At times there wasn't hardly any current between Lockport and Le-
- 762 mont. I do not mean to say there has ever been a time in my observation that there has been no current in the stream. There was always more or less current. In times of heavy rain or wet weather in the country above, the stream would become at times a large and rapid stream. The volume of the Desplaines River always depended upon the amount of rainfall within the watershed of that stream. There is a portion of the Desplaines River from Lockport to Joliet that was not entirely dependent upon it. Above I think it was wholly dependent upon that. In wet seasons the stream was practically full; in dry seasons it was very low.
- 763 The change I spoke of in 1870 was known here as the Deep Cut. It is an improvement made by the City of Joliet to provide drainage for the city; deepening of the Illinois and Michigan Canal. Into the Illinois and Michigan Canal, from 1870 down to some time in 1900, the

sewage of the City of Chicago was pumped. It flowed down through the Illinois and Michigan Canal to a point at or near Lockport. The excess of water above that necessary for keeping the canal to a certain level was discharged into the Desplaines River. It was a continuous level, practically speaking, from Bridgeport to Lockport on the canal. This diluted sewage was turned into the Desplaines River at Lockport and flowed through the Desplaines River, some of it, into what is known as the upper basin. It all came into the upper basin. I don't mean to say that all of this water that was discharged at Lockport eventually got back into the Channahon level of the Illinois and Michigan Canal. It was all discharged through its outlet of the Desplaines River. Some went into the canal and some went into the river. All that didn't go into the canal was discharged into the Desplaines River. The sewage, prior to 1900, was diluted by water of the Chicago River. In other words, the sewage was discharged into the Chicago River and pumped from the river into the Illinois and Michigan Canal. I don't know how much water during all of that period of time was pumped per hour. The point of discharge was at Norton's Mill; the hydraulic basin they used to call it. Norton' Mill is at Lockport. I am not sure whether more of the waters were discharged at Lockport than was needed for the mill or not; there was a certain amount of water discharged there; how much, I don't know. I don't know of any other connection between the Illinois and Michigan Canal and the Desplaines River than I have mentioned. Below the point that I have mentioned is a place of discharge from the Illinois and Michigan Canal. I have known the stream to be dry since 1870 or '71, at times. That, of course, would be when the canal was empty; when there was no discharge from the canal. The substance that was dis-

charged from the Illinois and Michigan Canal was very foul in its condition, had a very offensive smell and odor. It could be observed a very considerable distance in and about Joliet. Since the Sanitary District channel has been discharging its waters into the Desplaines River, it has been very greatly improved. It has at times—there
767 are times when it is quite offensive even now. The water that is in the Illinois and Michigan Canal above the point of discharge is still foul and offensive. Whether the waters of the Sanitary District, where it discharges into the Desplaines River, is apparently pure and clean depends on what you mean by pure and clean. I would not call it pure and clean from appearance. It has a muddy appearance all the time. It is offensive in odor at times. I have observed it many times when I cross the bridge at night, when the atmosphere was heavy. This bridge
768 is located at Cass street; also at Jefferson street. The water is apparently clean, from appearances, at the controlling works. I have seen people step on stones and
769 thus cross the river at Lemont. I would not be able to say whether it had been extremely dry or not. I have seen them do it. The low condition of the river was caused by the dry season; I don't know whether it was extremely dry; I can't say as to that; I had no reason
770 for remembering. Between 1874 and 1882 I have noticed it often. Of course it was a dry season, but whether it was particularly dry or not, I cannot say. During a season of average, or more than average rainfall, there would be considerable water in the river at Lemont. I can't say how dried I have seen this stream prior to 1900 because I never made any measurements. I told you that I had seen people cross the river dry shod. The widest I have ever seen it was in August of '65, I think, '65 or '66, when it was practically all over the
771 plain. Well, it was full from the Illinois and Michigan

Canal to the bluff. I would say it was half or three-quarters of a mile wide, but I may be away off. I never had any occasion to note the distance. It may have been nearer a mile and a half. I have no means of knowing the depth of the stream at this time.

Re-direct Examination of the Witness T. E. Marsh.

(Read by Mr. O'Connor.)

In the vicinity of Lemont and Romeoville, a distance of three or four miles this side of Lemont, the natural bed of the Desplaines River was shallow. I did not observe particularly opposite Lemont what the substance was underlying the river. I know there was stones there.
 772 I should say it was a limestone body generally down the valley. I should say the whole valley here was lined with limestone. High water appeared in the Desplaines River, during the years I have spoken of, generally in the spring of the year. In the Desplaines River there was comparatively little water in the summer and fall seasons.

Re-cross Examination of the Witness T. E. Marsh.

(Read by Mr. Sullivan.)

Whenever considerable rainfall took place in the country above Lemont, Riverside and Joliet, it was immediately followed by higher water in the river. So, if the
 773 heavy rains did not take place at the times I have mentioned, the increase in the stage of the water would follow then whenever they did take place.

(Signed) T. E. MARSH.

774 Plaintiff offers in evidence the deposition of Thomas J. Kelly.

THOMAS J. KELLY:

Direct Examination.

(Read by Mr. O'Connor.)

My name is Thomas J. Kelly. I reside in Joliet; have resided in Will County ever since 1849; live about 275 feet from the Desplaines River. I am in the dry goods business. My dry goods store and residence are located in the same place. A part of the time I resided on the west side in Joliet; west of the river, at Broadway. That residence was a block and a half from the canal and
 775 river, which were at that time both one. We owned some property in the north end of this ward, corner of Benton and Joliet streets. My brothers and sisters have been interested in farm lands in the town of Lockport near the Desplaines River. That is on the west side.
 776 Father bought that land in '64. I have been Mayor of Joliet. I was elected in '83 first; then in '85 and '89; have served three terms as Mayor. I had to cross the Desplaines River frequently, during the time I have resided in Joliet. I remember the improvement in the river known as the Sanitary District work, occurring five or six or more years ago. Prior to that time I noticed the condition of the water in the river at different seasons of the year. Prior to 1870, in Joliet, in dry seasons there was very slight flow of water, just sufficient to lock the boats through and what was used by the Norton Mill in Lockport. You could walk across the river below the Jefferson street dam with an ordinary pair of shoes on, without getting your feet wet. I remember the work
 777 known as the deepening of the canal, which was sought

to be done in '69 or '70. When I speak of locking boats through, I refer to the Illinois and Michigan Canal. In 1870 and after this new cut in the Illinois and Michigan Canal, there was always a fairly good supply of water in the Desplaines River in Joliet, at and below the Jefferson street dam, in dry times. There was enough to make a thin sheet over the dams; the dams were never dry. Before that cut, you could walk across the face of the lower dam there. There was water escaping from the Illinois and Michigan Canal at Lockport during those years. One outlet is where the race-way, where the water came through from Norton's Mills and about a mile and a half above Lockport; there is a waste weir on the Fitz Patrick farm. North of Lockport was what was known as the Fitz Patrick farm, occupying a cross section of the valley from the Illinois and Michigan Canal to the west bluff, prior to 1893. Before the sanitary work in the valley I noticed the condition of the Desplaines River north of Lockport in dry seasons, above where this water from the Norton weir came in. I have seen it as dry as the surface of our street before it would be sprinkled; absolutely dry. In the summer there was generally a low stage after the spring rains go out. I just looked at the condition of the river immediately opposite Lemont, prior to 1893, from the cars, going past; that is all. There is some place in front of the depot, where the main channel would be entirely dry; even above, where the Santa Fe crossed the river, there would be only a little water there, but I generally went on the Rock Island, so I never noticed it many times. Romeo is called four miles from Lemont. It is actually about three miles from the north line of Lockport. Romeo is between Lemont and Joliet. From Lemont to Lockport the general character of the natural bed of the Desplaines River is pretty shallow, except in a few places where there were pools. The substance underlying the

river there was rock. For a long way below Lemont, there was a diversion channel made there to take the flow. The
781 highest water generally appeared in the Desplaines River during the spring. I was familiar with the lands adjoining the river between Romeo and Joliet during those different years, before 1893. During the summer season, on an average, after the 1st of May, I cannot give you any
783 guess as to how wide was the portion occupied by the Desplaines River in that valley. Lands were used for pasture and meadow. I remember some islands in the City of Joliet below the Jefferson street bridge; before 1893 and after '70, there might have been probably in some channels six or eight inches of water. There was a pool directly east of that island that was pretty deep; so deep that a horse would have to swim in it. Between the island and the bridge there was about six or eight feet of water. I can show you a photograph of the water. It was taken on the day they commenced taking out that island. I haven't the photograph with me. It would show the stage of the water. I observed the condition of the basin immediately above the Jefferson street dam as to freezing
784 in the winter times before this change; if the winter was cold enough it froze. Since the Sanitary District work, and since the dam has been taken out, the river has never frozen, so far as I have observed; not below the Jefferson street dam. I know a road leading out of the Village of Lockport called Ninth street. It runs a little north of west. It crosses the Desplaines Valley. Since putting in the controlling works and the change in the river there is a bridge over the channel of the Desplaines River at Ninth street. That bridge is about 100 rods to 110 from the controlling works. Since the turning in of the water in 1900,
785 under the Ninth street bridge, the width is about two
786 spans, 600 feet. On the east side the water does not extend east of the bridge; on the west side it does a little

above and below. The width of the channel under this Ninth street bridge is about the same as the width on the Ninth street bridge up to the controlling works. It continues down to below the Sixteenth street bridge. I have seen this water channel under the Ninth street bridge frequently during the last five years. My relatives reside west of Lockport. Have seen it every time we go up to see the folks, generally Sundays. The entire mouth of the
787 channel was occupied by water; the flow was quite rapid.
788 There is just a murmur that flowing water would have, as it passes the pier or abutments on the bridge. At the times I have seen it, that was generally along in the forenoon and in the evening again, it was generally uniform. I have never seen a greatly increased flow there but once.
789 The sound was as uniform as the water pouring over the dam here in Joliet. It is one of those sounds that you hardly notice until it is stopped. A boat coming from the south, in order to pass through the City of Joliet, it would look through what is known as the Jefferson street south into the lower basin. From that it would enter the upper
790 basin from the lock at Jackson street. It would come out of the upper basin a little below the penitentiary north of the City of Joliet. It would then get into the canal proper towards Lockport and Chicago.

Cross-Examination of the Witness Thomas J. Kelly.

(Read by Mr. Sullivan.)

Prior to the removal of the dams at Jefferson street and at Jackson street, the water in the basins above these dams, in cold seasons, would freeze. Above each of these dams there would be a natural water level extending back for a considerable distance, and that would constitute two practical slack water powers, except in times of flood. Under ordinary conditions it would make and

constitute two slack water powers. The natural contour
 791 of the bed of the stream was a quite sharp descent. With
 the removal of those dams the slack water powers were
 destroyed and the river then occupied, unobstructed, its
 natural bed and, of course, followed the general slope of
 the ground. The current was a very small affair. There
 was quite a flow to it, but not a large volume of water.
 It was an ordinary rapid stream. Well, there was about
 792 a mile and a half south of town here, there was a small
 shallow place in the river there and that used to freeze
 in the winter. There was a decided change in the current
 of this stream after the removal of the dams, where the
 793 dams were. Low water in the Desplaines River would
 prevail mostly along the latter part of the summer or
 early fall. All seasons of course are not the same. I
 never noticed the lowest stages of water during the driest
 seasons especially. We have had some men that make
 notes of those things every day. Naturally, during the
 dry seasons, the river would be the lowest. I never re-
 member except once that the Desplaines River got very
 794 high. I think that was in '65. I remember the May
 floods in 1892, not the later ones. There was extremely
 high water in the Desplaines River at that time. I went
 up to Chicago the morning after the heavy rain. I went
 to the Alton depot and there was no train and I had to
 take an Alton train on the Rock Island. We came back
 on the Alton, as the damages were repaired by that time.
 It looked as though it was overflowed to the other side.
 It would probably be a mile or a mile and a half. It was
 795 not water to the Summit. I don't know what the object
 of the Ogden Ditch was. I suppose to work some of the
 Chicago water down this way. I know there was water
 enough there to flow towards the lake. During a dry sea-
 son the Desplaines River would be low and during a wet
 season it would be high. Prior to 1870, it would not be

high in the summer season unless there were some unusual freshets. Prior to 1870 there were only natural causes. In 1870 there was a change in the condition of the Desplaines River in Joliet, by reason of water added from the Illinois and Michigan Canal. I have heard the capacity of the pumps at Bridgeport, but I believe they were not able to send down much more than one-third. I think the usual amount sent down was about 30,000 to 35,000 cubic feet a minute. I have observed the condition of the waters of the Illinois and Michigan Canal. It was by reason of its noisome stench it was forced upon my attention. I was interested in having the sewage surplus as much diluted as possible. I had no personal observation; what I have on that question is all hearsay. I know the water was coming down there. My judgment wouldn't be worth a cent. I didn't measure the depth or velocity. Aside from the information I have already given, I have no further judgment upon the matter as to the amount. It all entered in the upper basin. There was only one point of entrance. There was one diversion at the Norton Mill. Eventually all of the water that was pumped in at the City of Chicago was merged into and with the Desplaines River here. There was more than was diverted. There was more diverted than was required for the purpose of feeding the Channahon level. There was also water diverted as power for manufacturing down the canal here. That refers to the several small islands in the Desplaines River below where the Jefferson street dam formerly was; one was a few rods below the Jefferson street bridge; it might be 175 or 200 feet, the rocky island that was with some trees. It was high, considering the elevation of the banks everywhere else. It might be eight or ten feet above the water; above the low stage. The other was a low island near the Rock Island. I never saw the upper one covered before 1900.

I have seen the lower one entirely submerged every year. The water went up pretty well on the upper one; it was not submerged. I have known this island to be submerged so that not to exceed a couple of feet of it would be above water. This condition would not prevail before 1900 in ordinary water; they followed abnormal rainfalls. Whenever those abnormal rainfalls took place the result was

801 apparent in the stream. The Norton Mill was there about in the '50's, sometime. It was a water power mill.

802 I don't know that it got its water from the Desplaines River before that time. When there would be six or eight inches of water adjacent to this island in the Desplaines River below Jefferson street, that would be a low stage

803 of water. I do not wish to make it understood that it was six or eight inches at all times. The bridge mentioned at Ninth street, which was 600 feet in length, covered the water that was spilled out from the controlling works of the Sanitary District, and the water that came down the Desplaines River also. Before the Sanitary District discharged its water there was a bridge for use between there and the town, a stone bridge. I couldn't tell you the width of that old bridge. I don't know. It was built in '68, I know. I have never given the matter any thought even. I don't like to guess at that I could measure. My guess would not be worth anything. I know about the width of this 600 foot bridge. I would

804 not like to give my judgment as to the length of this old stone bridge. The water that came from the Desplaines River and also the water weir north of Lockport used to flow under that bridge. I have known conditions to exist upon the Desplaines River during the time that this old bridge stood there, where the old bridge acted as a dam for the water and held the water up above and backed it up over the country, for miles above it. There didn't seem to be any difference above or below the

bridge; it was all covered everywhere. The water flowed out and around the bridge and across the road, and on
805 each side of the bridge. I think this bridge stood about ten or twelve feet to the arches, above the bed of the stream, at low water, and then the stone work above that for the guards and everything. I could only furnish an opinion as to the height of the water on this bridge in extreme high water and it would be that it came up to the top of the arches. I couldn't estimate
806 the exact depth of the water flowing under the present bridge at Ninth street. It looks to be along three or four feet. I think less than four and probably more than three. The velocity is quite rapid. I am not able to give
807 an opinion as to the velocity of this stream. In 1892 and in 1865, and I can only remember two other occasions between those years, when there were extreme freshets in the Desplaines River at Joliet. I couldn't tell you
808 the years. That is the only extreme freshets I recollect. The river seemed to be practically what it would be in a stream that wouldn't have any bridge at all there, at the old stone bridge. It was a rapid current above and below.
809 low. After the removal of dams number 1 and 2, the natural deposit was taken out and a large amount of excavation was done at the sides and bottom. It varies in width. That is about half way between the Jefferson street and Cass street bridges. There was none at the west; and a gradual widening; excavation commenced at the east side. I couldn't tell what was the general depth of the excavation. I couldn't tell the natural declivity in the changed channel of the Desplaines River, after the
810 removal of dams number 1 and 2. It was whatever the drainage channel required for its construction.

Q. As a matter of fact there has been high water upon different occasions nearly every year within your recol-

lection? A. Not that done us any harm. It stayed in the river channel.

Certainly there has been high water nearly every year after the spring rains.

(Signed.) THOMAS J. KELLY.

811 Deposition of W. H. IRWIN, offered in evidence on behalf of the plaintiff.

W. H. IRWIN:

Direct Examination.

(Read by Mr. Butters.)

My name is W. H. Irwin. I live in Ottawa, Illinois, and have lived there since 1889. My business is civil engineering and surveying. That has been my business, with the exception of four years, since about 1880. I have been county surveyor and civil engineer, Ottawa and Peru; have been such ten to twelve years, probably. I have made surveys of all parts of Sections 21, 22, 23 and 24. That is in La Salle Township. I presume you refer to
813 the Town of Peru and La Salle. I would state that these surveys were made at different times from 1890 to 1895 and then the last I was over there on the 8th of November, I was on part of that ground. Mr. Woods, a mining engineer for the La Salle County Carbon Coal Company was with me. I was doing work for the La Salle County Carbon Coal Company on Sections 22 and 23, and north
814 of the river also on 14 and 22. On the south side of the river I have been on section 21 for Mr. Wall, La Salle County Carbon Coal Company. Also I did work on 21 for the Brown estate, who own a part of that, who at that time owned the part west of McCormick's slough. I made field notes and measurements. I simply brought the times here. I have them in some six or eight different books. I can produce them if they are needed but I have made a map from those notes. I made a map of the measurements and the property surveyed by me, in reference to which I have been interrogated.

816 Mr. CHIPERFIELD: I stated that this map could be ad-

mitted without further proof, reserving the right to cross-examine as to the manner in which it was made, and as to what appears on it.

- 817 The figures as given in each tract represent the number of acres in the tract as platted or as shown on the plat. The different words that are there are sufficient of themselves to show what they are to designate. That is what they are put there for.

The COURT: Q. Is it drawn to a scale, if so, what scale?

A. 500 feet to the inch.

The top would be north, the right hand would be east, the left hand west.

Which said map is marked Exhibit 13 and is in the words and figures following:

EXHIBIT 13.

818 Copy of map.

819 The first time I surveyed there was in October, 1892.
On this land in section 21 there was mostly weeds and
willows, to my recollection. It was a very wet year.
Nearly everything was drowned out on the bottoms that
820 year. In June, 1895, was the next time in which I was
on 21 and at that time a large part of it was plowed and
some was planted. I couldn't state just exactly how much
but there was quite a part. I may have seen part of sec-
tion 22 and 23 that year but I would not be positive as to
that. In February, 1893, and in April, 1893, I was doing
some work on sections 14 and 23; the southern part of
section 23 and the eastern part. We ran our lines over
north to the river. In February and April there was
821 growing there nothing unless it was scattering weeds.
The last time I was on the land was the 8th of November.
I did some work on sections 23 and 26 July 16th to Aug-
ust 22, 1893, or 1890, I should say. At that time we ran
both lines, the east and west lines of section 23 north of
822 the river. We ran the section line. I ran lines at that
time on the whole of section 23. I made no note of what
was growing on the land in a general way. That was
July 16th to August 22d, we made quite an extensive sur-
vey of a great part of the bottom at that time and also
823 of section 26 south of it. I have no recollection on that
subject. I observed what was growing on the land while
I worked there. Corn was growing at that time; corn
and along the edges in spots where we ran the meander
lines there were weeds and willows and all that growth
that you would usually see on bottom lands.

Cross-Examination of the Witness W. H. Irwin, by Mr. Chipperfield.

- 824 I am usually called a civil engineer. I have been called that by many people. I work at civil engineering and surveying. The most of my work is done in La Salle County, you might say, and adjoining counties. I have worked a large part of my life. My work has been Municipal work and some construction work on bridges and foundations. It has been that scope or class of work such as usually would be found in this and adjoining counties. I commenced some work for the La Salle County Carbon Coal Company last Friday, the 8th of the month. I was down there in their employ and I have since then made this map. I presume I am appearing in this case as a witness in their employ; they have sub-
- 825 poenaed me. What the exception of the meander of the Illinois River east from the quarter section line of 21 and southeast of that section line I have run all the lines, or assisted in doing it. The plat is my own work with the exception of the lettering. That is put on by a young man in my office, but the plat was made from surveys made by me with just that one exception showing the river line along the east half of the southeast quarter of section 21. I ran the line, the section line north. I surveyed the west edge of the Big Vermillion River. I got the other outlines from measurements at the bridge. I have measured the width of the river at the bridge
- 826 which crosses the Deer Park road. I have not surveyed the east bank of the Vermillion River but I have measured the width of it at the bridge, and also at the quarter section line about a mile north of it. The scale of this map is 500 feet to an inch. I did not survey the east bank. I measured the river, as I said, on the section lines. That would be at two points; all the distance between those points, I just sketched it in; I assumed it.

828 I made these two measurements. I sketched the other
 thing from the lay of the land, from the eye. This is
 829 merely a visual reproduction of the east bank, yes sir.
 I did not survey the right of way of the C. B. & Q. Rail-
 road which is on this plat. I got the points of their lo-
 cation, the location of their center line I got from maps
 in the recorder's office platted the right of way; to that
 extent I adopted that from a map not made from my
 survey. I haven't got the field notes for that survey,
 except what I copied from the county records. I only
 know that I have platted the line where that intersected
 it and that I have drawn the railroad in from those notes
 to those points. I don't know whether those field notes
 were correct or not, only as I know another man's work.
 If it will scale out pretty good on the map, we assume
 830 it is correct. Any other man's work is correct depend-
 ing on whether he does it right or not. If you can check
 up his work reasonably well then when you make a plat
 you don't investigate any further. I did not survey the
 Illinois Central Railroad only at points where we crossed
 it. The two lines running parallel to the Illinois Central
 Railroad, about an inch and a half apart, indicate the
 right of way; I did not survey it. I deducted it from
 the total; went around the whole of it. As I say, I took
 that from plats on file in the recorder's office. This plat
 is made from their maps to that extent. We assumed
 the number of tracts that there are on this I. C. R. R.
 831 right of way. We did not state them out. In running our
 meander lines along the river we got into section points
 at the south bank and took the angle of the bridge and
 from that we have platted it. I don't remember the
 width. I think it is about an eighteen foot roadway.
 That scaled out width there is probably exaggerated; it
 will be exaggerated. We usually do that with bridges,
 832 show them larger than they are. It may not be correct

to scale. As I understand, from the descriptions, the plat indicates the outlines of their property, of the property of the plaintiff. I did not have it in mind that all of the south half of section 23 is involved in this suit. This plat shows all of section 23. I understand from the attorneys that the parts where the acreage are shown are involved in this suit. I don't know of my own knowledge what is involved. The dotted line on section ... on the south part of section 23, which is to indicate the south line of the bottom lands, the north line of the south half of section 23 east and west of the Illinois Central Railroad right of way, that part of section 24 north of this dotted line and south line of the bottoms, and west of the Vermillion River, and all of that part of section 21 and all of those tracts of section 21 where the acreage is shown. I have been informed this plat is a plat of the property involved in this suit. I don't know; of my own knowledge, I don't know what are the boundaries of the La Salle County Carbon Coal Company, only as I have been informed. I have not attempted to ascertain them for myself.

The dotted line along the south half of Sections 22 and 23 and running into 24, I mean by that it is the lands that are subject to overflow; the bottom lands, as they are usually called. It is my idea that is the high water mark ordinarily. Some years it is higher than others. I have put the mark where I found the drift-wood at present to show it. I have no way of knowing exactly where the high water mark is, only by observation of drift-wood like that which I know are brought to certain places by high water; it is approximately correct. It was my idea of the high water mark. I surveyed that line last Wednesday, or last Friday, I spent a day over there. It is 118 feet north of the center of the road on the east line of Section 23. It is 290 feet northwesterly on the

line of the Illinois Central. The interval between those two points, we took the angle of the switch down there and laid it out on the plat; on this spur, yes. I made the
836 roadway of the Illinois Central Railroad 1,056 feet wide, 528 to the center.

Q. Now, tell me, if you please, how much of that in acres would there be coming out of Section 23? A. There are about 103 acres.

In the south half of Section 23, about two-thirds of that amount, judging roughly; the 5.75 acres indicated on Section 24 is that part of Section 24 lying north of what you might call the south—what is there called the south line of the bottom lands between the Vermillion River and the west line of Section 24. I do not include any of the C., B. & Q. right of way.

Q. In the east half of the southeast quarter of Section 23, you have indicated 39.62 acres, what do you mean by that? A. The net area exclusive of the rail-
837 road's right of way.

I made those land measurements myself in each instance. I ran the section line on the east and west boundaries; also the quarter section line of Section 23; also the quarter section line north through the center of Section 23, from which they are computed; to the quarter section line across 23, the line was closed. I never surveyed this entire 39.62 acres. I computed it from the surveys on the whole quarter section. I surveyed above
838 the switch, surveyed on the north line of this tract, on the east line and on the west line of the quarter section.

Q. But you did not survey the half quarter section line or the 80 acre line, did you? A. Only as I came along with the survey of the switch.

I picked it up when I got there. I did not make any survey.

Q. For instance, the west half of the southeast quarter of Section 23, you figure there is 44.88 acres in that; how do you determine that? A. In the same way as the other.

839 Q. And in the north, or in the southwest quarter of Section 23, a little triangular piece just by the center of the section and east of the right of way which you compute as 1.10 acres? A. Yes.

Q. How did you get that? A. By the same survey that I did the other.

I got the 18.41 acres on that same half of the southwest quarter by the same survey. On the west half of the southwest quarter of Section 23 I compute there is 60.51 acres. I made that by the same survey. Also as to the 19.27 acres and 21.25 acres on the west half of the northwest quarter of Section 23, I got that by a survey which I made of the whole tract, by running these lines which I have stated. I did not run the lines around each of these tracts. I got the tract 35.95 acres in the southwest quarter of Section 22 in the same way. I have
 840 only computed the areas to the north slope of that switch. The dotted line is practically the high water mark. There was some low land a little south of the switch. That is where I made my computation. The 52.54 acres in the east half of the southeast quarter of Section 21 is the area of the land between the west line of the tract and
 841 the top angle of the bank of the river. If I recollect rightly there is about twenty feet north and south in the south quarter and thirty-six feet east and west, that much of an excess; that is my recollection on it. In the east half of the southwest quarter of 21 I compute there is eighty-two acres. In the west half of the southwest quarter of 21 I compute there is 52.63 acres. Those were the results of actual measurements. With the exception of the meanders of the Illinois River on the quarter sec-

tion line east and west in Section 21 and southeasterly to the east line of the section, that is an actual survey. I got the line of the river from Mr. Woods' notes. He is now dead. He was mining engineer and in that work
 842 surveyed for the Carbon Coal Company at that time. He was not a public official that I know of. I have taken his notes by his latitudes and closed his points and found they are right; assumed them as mine. I would assume the intermediate points were right. Yet, certainly it is an assumption. I never heard of the slough being called
 843 anything else but McCormick's slough. To my knowledge it is the only slough on the west side of Section 21 of any considerable size. I did measure the meanders of the east bank of it. I got the west bank from part of the work I did for the Brown estate, at one time making a survey for the Brown estate and Captain McCormick. I got the west bank by meanders. I did not survey the south bank or the west bank. That is probably sketched in there. I computed that there was in Sections 23, 22
 844 and 21, 676.73 acres of land. Those are the totals of the parts contained on this plat; in Section 21, 446.03 acres.

Q. I wish you would give me your details, give me the amounts and your descriptions of the land. A. The west half, northwest quarter, 21, 10.38 acres; the east
 845 half, northwest quarter, 64.74; west half of the northeast quarter, 33 acres; east fraction of the northeast quarter, 69.24 acres. It appears on this plat. I have been informed that those two tracts are involved in this suit. I don't know as they are. I am simply making the measurements if they are. I make them 69.24 acres; the east half of the southeast quarter, 52.54; west half of the southeast quarter, 81.5 acres; east half of the southwest quarter, 82 acres; west half southwest quarter, 52.63 acres; total, 446.03. Section 22, 39.95 acres; that is in the
 846 eastern part, southeastern. There is not any more in 22

to my knowledge. The west half of the northwest quarter of Section 23, 19.23 acres. The river is not contained in the computation. I did not deduct the river, for I did not compute it. I left out the river. I made no survey of the water, only of the land to the water. That embraces so many acres. I was informed this land in this suit in Section 23, north of the river, was as I have shown it. I have simply located it there and left that to be determined. Another tract of 21.25 acres, a total in the northwest quarter of 40.48 acres; the west half of the southwest quarter, 18.41 acres and 1.10 acres, a total of 19.51 acres. That 1.10 acres is right by the center of the section; west half of the southeast quarter, 44.88 acres; east half of the southeast quarter, 39.62 acres; in Section 24, 5.75 acres, a total of 691.73 acres. I have not computed the acreage of the bayou.

848 I made a survey of the shore line of the bayou. My field notes are at home. I made that survey in October, 1892. I did not run the lines along the north edge. I 849 got the point where it meandered. It is not a very irregular line on the north shore. We sketched it; assumed it that way from one point to the other. Did not take in any of the Illinois and Michigan Canal as shown on this map only in getting a start south from the section corner, which is in the canal, from a point north of the canal.

850 There is none of the 17.74 acres of land in the north part of the northeast quarter of Section 21 in the canal. These parallel lines, about 125 feet, I would judge, or perhaps 100 feet apart, adjacent to the canal and running parallel with it, are supposed to be the ninety foot lines. I think they scale that. I surveyed the bridge and road on the west part of Section 21 in making the survey for Brown and Captain McCormick and just put it in the map. I don't know the width of the road. It may or

may not scale correctly, just merely the dotted lines. As nearly as I could indicate it, the bridge at the north of the road on the west side of Section 21 was sketched by
851 me. I did not measure the width of the bridge. I simply got the length of it. I did not survey it. It is a 16 or 18 foot road, I don't know which. I have not attempted to show any elevations of any kind on this. There is nothing shown or disclosed by this map other than the Brown survey and some of the bridges which there ap-
852 pear. I don't remember whether the government ever meandered the McCormick slough, although in the government field notes the distance is given across the bayou. It might and might not indicate a meandering. The distance is given, of course, but whether they have meandered back or not, I don't know. I don't know, in the original filed notes, whether they include or exclude the bayou. The banks of the Illinois River have been meandered. The bayou on the northeast quarter of Section 21 has not been meandered to my knowledge. It may have
853 been and may not. There has been filed notes excluding from the field notes of this county the Illinois and Michigan Canal; that was at Lockport; not to my knowledge have they been filed in this county; I never saw them. The two circles appearing with marks such as 22, 23, 27 and 26 are the corners of the several sections. And where, in the center, I have a central figure, such as 23, with a circle around it, that indicates the center of the section. In any of my computations I have nothing for the
854 Illinois River. Or on the Illinois and Michigan Canal, or any of the bayous or sloughs, or the Illinois Central Railroad right of way, nor the C., B. & Q. right of way, nor anything south of what I have designated as the high water mark. I found on these lands spoil banks. I did not indicate them on the survey. I don't recall but one. That is at Jones' shaft. I don't know anything about the

- dimensions of them except from recollection. I have made no measurements that would indicate to my mind how much of this land was occupied by the spoil banks.
- 855 The early part of the year '89 was wet. I made my first survey in October, 1892. Then there was mostly weeds and willows. It was a wet season. In 1895, part of it was planted and a large part of it was plowed; that is my recollection. I refer to the land lying between the McCormick slough and the Illinois River. I mean to the east of McCormick slough, also west of it; west of it is the Brown land. Right within the following day or day after
- 856 I made a survey for Brown. And the part between the slough, going easterly towards the river, is the land that was involved in this proceeding. At the time we were there they were plowing and planting is my recollection. July 16th and August 22d we were making quite an extensive survey there. We were on 23 and 26. The corn was over north of there, over in the bottoms; just remember seeing corn generally in the bottoms. When I made the survey on the 8th of November I found corn there. My home is here in Ottawa and has been for a number of years. When I would be down on this land it would be in the pursuit of some business. This survey has been made for the La Salle County Carbon Coal Company.
- 857 The defendant objects to the admission of the plat for the reason that no proper foundation has been laid; objection overruled; defendant excepts.

WILLIAM A. MEANS, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

- 858 My name is William A. Means. I live in Peru. I am forty-four years old, last May. Lived in Peru forty years. I mean Peru, La Salle County, Illinois. My business is

insurance and real estate; principally in life insurance. I live on Center street at the present time. It is the first street on top of the hill above the Peru depot. Water street, from the May's corner, May's lumber yard corner, down through the business district, is right on the edge of the river. The C., B. & Q. is between the street and the river. Center street was formerly my home. I lived there a number of years, when I was a boy and at the present time I room there. My home in the meantime was on Second street, Peru. I have an acquaintance or knowledge in relation to Section 21 that lies south of the
859 Illinois River. In relation to this part of Section 21, shown on the map there, I was very well acquainted with the land. The conditions of Section 21 from 1892 to 1904 and since that time have been more or less acquainted with the condition of the land. In the year 1892 it was worked by my father-in-law, Samuel Waugh. He died in
860 1903. He worked the land over twenty-five years, to my knowledge. He had partners at times and various men working for him. I was there as the boy. Grew up there and we boated over there and going across the river I was familiar with the land from the time I was ten or twelve years old. We used to go there a great deal in the summer time, swimming, as boys. I refer to Section 21
861 on the edge of the river by Peru. At times went in on the section. And we would fish in that so-called Mud Cat Pond. It is very rich farming land. That is, the rich, black soil. My knowledge goes back in the '80s as to the uses to which this land was put. That land has been used in raising corn.

Mr. CHIPERFIELD: Wait a minute, if you please. I object, if your Honor please, on the ground that the time inquired about is too remote.

The COURT: I think I will let him answer.

Mr. O'CONOR: I will give you some limitation, Mr. Means.

The COURT: It was in the '80s, I understood you to say.

Mr. CHIPERFIELD: That is the time I object to.

A. Back to the '80s.

Mr. O'CONOR: All right, we will get down closer.

Q. Starting in the year 1890 down to the year 1900, do you know to what use that land was put? A. To raising corn.

Samuel Waugh worked the land through his son. His son managed the property. Mr. Waugh was the lessee. From 1890 down to 1900—well, from 1890 to 1893, I was over there occasionally each month. From 1892 to 1900
 863 I was over there very frequently, with my wife and family. She was over there a great deal. The folks went back and forth constantly. I was over there nearly every week from 1892 to 1903 and 1904, during the time my brother-in-law was living there. From the year 1892 down to the year 1900 this land was used for raising corn. I think there was between 375 and 400 acres all told and probably 85 per cent. of that land was cultivated for corn. There is a piece of land east of that, a frac-
 865 tional piece, south of the river and also a 40 west of section 21, which was generally one piece. The corn was planted at different times of course but it was one field of corn. Why, the land produced at least 60 bushels to the acre over there; 60 or 65 on most of the land. I would not say I am enough of a farmer to make a close estimate, but I can tell a good field of corn when I see it.
 866 Yes, it was good corn. In 1892 the entire valley was flooded, section 21 included. It was due to excessive rainfall during one night in May. There was not anything raised that year on section 21; very little was raised on

the hill land, on account of the land being saturated. Railroad tracks washed out, and all that sort of thing. Samuel Waugh continued to farm this land in section 21 within the limits I have mentioned, down to the time of
867 his death. He died in September, 1903. During all of these years I have been familiar with the Illinois River. I would see the Illinois River in and about through there almost daily; have fished in the Illinois River; used to
868 swim in it; boat ride around there. I remember the announcement was made that the water of the Sanitary District was turned in at Lockport and I remember there was a slight raise in the river and we watched the effect on the river at that time. Since the turning in of this water the Illinois River has undergone changes. According to my best observation along the river, in that neighborhood, I think the river is four or five feet, on an average, higher at all seasons of the year than usual,
869 than it was before the water was turned in. It is pretty hard to say how high the level of the land is above the surface of the river. There are high spots and low spots on section 21 and I don't know exactly how to answer that question. I am not a surveyor. Since 1900 I have been over there or seen it either going along it or going by it, or otherwise. I have been over there several times a year during those years, at all seasons of the year. 1900 down to the present time I have observed the condition of section 21 with few exceptions. I have been out west traveling around quite a bit, but as a general thing I kept notice of the river in relation to that land over on the south side. During those years
870 I have actually been on section 21, on an average a couple of times during a year, during the entire time. Well, since the year 1900 there has been a full crop of corn raised on that portion of section 21. The river has raised in the spring and water has laid on that land until it was too late to plant a crop and portions of section 21

have been badly washed out by the current that runs
 871 through from the river across to the so-called slough.
 The river comes up over the bank. The main current is
 through this way. A great portion of the high water
 going around this way and a great portion of it going
 to the old slough; makes a short cut; the old slough across
 to the south bluff here. I think the river has been high
 at times during the years ever since the year 1902; nearly
 every year there has been a flood and that condition pre-
 vailed over there on a portion of section 21.

Mr. O'CONOR: Q. Now, tell the jury in your own way,
 Mr. Means, what effect, if any, the increased flow on the
 river that you have described, in all its detail, insofar as
 you know it, has had upon section 21?

Objected to by the defendant as assuming there has
 been testimony as to the increased flow of the river.

The COURT: Let him answer the question.

Defendant excepts.

A. It has been impossible to farm more than a few
 spots here and there over that section 21.

Moved by the defendant to strike out the answer as
 being a conclusion of the witness and not a de-
 scription of the condition. Motion overruled. De-
 fendant excepts.

Well, instead of there being an almost continuous field
 of corn over there, the corn has been in patches and high
 spots. The low ground has been uncultivated and covered
 with a dense growth of weeds and vegetation that
 873 grow in water. I think there has been a difference in
 that regard say from the year 1902 down to the present
 time.

Defendant objects to the comparison being made by
 the witness. He can state conditions now and let
 the jury draw the comparison. Objection over-
 ruled. Defendant excepts.

874 The water has laid on the land until it was too late
to plant a crop in most instances.

Motion by the defendant to strike the answer as not being responsive to the question. Motion overruled. Defendant excepts.

875 Prior to the year 1900 section 21 was put to use during the winter, grazing cattle and horses. From the year 1890 down, we will say, to the year 1902 this land was generally used for grazing cattle and horses by my father-in-law; the cattle grazed on corn stalks in the winter time. As a rule, during the year 1890 to 1900, it was possible to leave the cattle out on section 21 to graze about the end of November; late in November until early in the spring; when the spring snows would melt away and the melting snow would make the ground muddy and sticky it would make it necessary to guide the horses and cattle off.

876 Mr. O'CONOR: Q. Now, since the year 1902 down to the present time, what has been the condition of that land, if you know, during the winter time or winter months, generally so-called?

A. Well, from 1893 until 1903 it was generally unsafe to risk cattle or horses on the bottom lands on account of the raise in the river.

Mr. CHIPERFIELD: Move to strike it as being purely the conclusion of the witness instead of a description of facts from which the jury can draw the conclusion.

The COURT: I think I will overrule the motion.

Defendant excepts.

The COURT: It is not improper for a witness to use that form of expression in a matter of common knowledge about horses and cattle being pastured, if he sees fit to use that. I think I will overrule the objection.

Defendant excepts.

From the year 1902 on down the water comes up over section 21 during the winter. Last fall the river rose suddenly and covered the land during the entire winter until late in the spring. This winter, 1911—1912, it was. I did not personally keep any record as to when the river was over this land.

Q. Now, generally speaking, if that river overflows this land in the fall months, or winter time, about when, generally, does it come in over the land?

878 Mr. CHIPERFIELD: Object to it as argumentative and suggestive.

Objection overruled. Defendant excepts.

A. In the years I mentioned in the preceding answer—

Mr. CHIPERFIELD: Move to strike the answer as not responsive.

Motion overruled. Defendant excepts.

879 Q. 1890 to 1900. With reference to that period of time, as to when the water came up and in relation to the time, from the year 1902 down to the present time, has there been any difference as to when the river actually came up and came over the land? A. There has.

Mr. CHIPERFIELD: I wish to object. The witness answered before there was an opportunity to object. I object to the witness being called upon to make a comparison or to give a conclusion. He can state conclusions and the jury can conclude from that.

Objection overruled. Defendant excepts.

From the year 1902 down to the present time I don't think this land has been generally used.

880 I have seen this land during the winter months from the year 1902 down to the present time.

The COURT: Just wait a minute. It may be that the statement of this witness that it was unsafe to feed the

horses and cattle, from some point of view, might be subject to criticism. I think I will exclude that. I will exclude that statement.

Very generally it has been put to very little use during the winter months from the year 1902 down to the present time.

Mr. CHIPERFIELD: I object to it as being purely the conclusion of the witness and not responsive to the question.

Objection overruled. Defendant excepts.

I think there was one year since 1902 there was cattle in there quite a portion of the time during the winter.
 881 I don't recall what year it was. Nearly every winter, from the year 1902 down to the present time, there has been more or less water over the land. Since 1902 I have noticed a different effect after a rainfall, in the action of the Illinois River, than I did prior to that time. The river rises much quicker. That is, overflows its banks much quicker than it did before the year 1900. The river
 882 remains high enough to overflow the land for a longer period of time than it did preceding 1900. The water passes off now slower. I have been in the real estate business since 1908. I was, in a general way, in the year 1900, acquainted with the fair, cash market value of lands in the vicinity of section 21.

Q. Now, what, in your opinion, was the market value, fair cash market value, of section 21 so far as I have referred to here and you have testified to it, in the year 1900 prior to the 17th day of January?

Mr. CHIPERFIELD: Objected to on the ground no proper foundation has been laid for the expression of opinion other than the mere conclusion of the witness that he knows.

Objection overruled. Defendant excepts.

A. I think that portion of section 21, judged by the productiveness of the crops—

Mr. CHIPERFIELD: Wait a minute. Object to that. It is not a question of judging by productiveness of crops.
 883 It is a question of the fair cash market value, if Your Honor please, that it would sell for in the market. He may take that into consideration, but that is not the test.

The COURT: I think I will let him finish his answer.
 Defendant excepts.

A. \$90 to \$100 an acre.

884 Q. What would be the fair cash market value of that land, Mr. Means, on the 18th day of January, 1900, after
 885 the turning in of the Sanitary District water, taking into consideration in giving your opinion all of the facts that you know at this time?

Mr. CHIPERFIELD: Object to it as being incompetent, irrelevant and immaterial.

Objection overruled. Defendant excepts.

A. I should say \$45 to \$50 an acre.

*Cross-Examination of the Witness William Means by
 Mr. Chiperfield.*

I am 45 years old, the 25th of last May. I have been with the Illinois Zinc Company for 14 years. Previous to that time I was in a bank in Chicago, when I was
 886 a young fellow, but since that time, since 1904, I have been a salesman on the road; real estate and insurance. When I was with the Illinois Zinc Company I was a bookkeeper and assistant to the general manager for the last six years I was with the company. I was the
 887 general manager's assistant. May, 1904, was my last service to the Illinois Zinc Company. I commenced about 1890. After 1904 I traveled for my health. I was out

two months; most of the time in the woods of Wisconsin.
888 I have been located at Peru since that time. I have sold
Portland Cement on the road about six months; that was
in 1908. I was traveling constantly during that time.
Would be away from home considerable then. I have
been in the land business. I was in a bank when I was
a youngster, in Chicago, from 1887 to 1890. Have been
889 engaged in the land business more or less since 1908.
In 1908 and 1909 I averaged a trip of about once a month.
I don't necessarily assume to be an expert in real estate
values. I would not say in giving my testimony that I
was an expert. My principal business has been insurance
business. I have not sold land in the vicinity of
Peru. I have not dealt in land in that vicinity only in
connection with my father-in-law and my mother. That
is all the transactions I have had down near Peru. I
have not had any real estate transactions in the vicinity
890 of Peru. A few years ago there was a fraction of section
21 sold at petition sale, you might say forced sale. Went
around \$70 an acre. I think it was some 10 or 12 years
ago. I would not swear that the sale was conducted since
1900. I don't know exactly whether it was before or
after 1900. In my expression of values I took into con-
891 sideration the values of land lying adjacent to that land,
that is farmable, that is subject to cultivation, to raise
crops. I can't say that I am basing my opinion as to
the value of this land before 1900 upon any actual sale
or transaction. It is based on general information re-
garding relative values of land. I don't know of any
892 actual transactions. I know of a refusal that was made
on a trade; not of my own knowledge I don't know of
any actual sales. I don't know of an actual sale. My opin-
ion, since 1900, is based on the same assumption as be-
fore; based on a refusal of a trade; not on an actual
transaction. I don't take into consideration, in my ex-

pression as to values since 1900, any actual sale. This land was untiled land. Pretty fair drainage over most
 893 of it; natural drainage. There was no tile in this land. There was never a foot of tile on this land. There was no improvement on section 21. There was never a house or shed or building of any kind on that portion of section 21.

Q. Was it ever possible at any time, during the 25 years that your father-in law occupied this land, to build a house upon those premises and have it remain there from one season to another? A. Well, it would not re-
 894 main permanently. It might remain from one season to another during a period of four or five years, according to the average floods over the land.

895 I think there was a number of seasons when the water failed to get over that land during the winter months. Generally there was a January thaw and February rains in the river; sometimes it would come over the land badly and other times not badly but it was an unsafe proposition to put buildings on that land. It was the kind of land on which buildings could not be built.

Q. Isn't it true that back in 1890 that the prices of the very best La Salle County lands, taking the best land that you could find of all La Salle County, was not to exceed \$100 an acre? A. That was a fair average price
 896 for the lands.

Q. Of all the lands of La Salle County, the best agricultural lands? A. Yes, sir.

I don't know of any lands in the vicinity of this land during the time which I mentioned just prior to 1900 sell-
 897 ing at from 20 to 30 and 40 dollars per acre. I could not name the grantors or grantees or anything of that kind, any of the details of the transaction. I did not take into consideration in my statement that this land is worth

from \$45 to \$50 per acre, the fact that it is underlaid in its entirety with a fine vein of coal. The coal is not taken into consideration at all.

Q. Now, when you take into consideration the coal, what would you place as the value of this land? A. I
898 have sold 200 acres of coal adjoining section 21 for \$30 an acre for the coal land.

Q. When? A. In 1894.

Q. Oh, yes. What do you say is the value of the coal per acre now? A. That particular coal is held for a certain purpose.

Q. You will answer my question, please. A. Well, I would not state that there is any—would not state from my own knowledge there is any advance in the price.

Q. Don't you know, as a matter of fact, that coal located as that coal is could not be bought for \$100 an acre today? A. I don't know that of my own knowledge, no.

Q. Isn't that your opinion as a man engaged in the real estate business? A. Well, I would say that the particular piece I referred to could not be bought for any price.

Q. I am not talking about back in 1894. I am asking you if the coal located in this section at the time you attempted to fix the value, taking into consideration all that you know now? A. Well, I suppose \$100 would be considered a low price for it.

899 Several hundred head of stock has pastured on that ground at different times. I would not say they were fattened, but they were fed on the land. They ranged the land and got the corn stalks and were fed whatever it was necessary. They were fed whatever it was necessary to fatten and sustain them. They were allowed
900 to range the river bottoms. They were fed whatever was necessary to fatten them. None of these cattle could

be stabled or shedded on this land before 1900. They were allowed to run wild down there. It was necessary at different times during those winters, when the river rose and would come on a part of this land, to drive the cattle back to the high land; at those times the cattle had to go.

Court adjourned to Thursday, November 14th, 1912, at 9 A. M.

901 November 14, 1912, 9 o'clock A. M.

Cross-Examination of the witness William A. Means Continued by Mr. Chipperfield.

I was over there as a boy but after I was married I was over there frequently with my father-in-law. In a general way I knew the land for 25 years. My father-in-law did not live upon these premises. He did not live there in the true sense of the word. Well, they stayed over there, the family did, after they came down from Chicago in 1893. There was never a house on those premises. He did not live on section 21. Yes, there was a road leading to section 21. Up to a few years ago there was not a public road except along the south line of section 21. There is a road now. There is a road that leaves the public highway. It was established, as I understand it, by the Carbon Coal Company and Brown. The public highway comes along the west side of the Brown land. There has been a road established and my understanding was that it was an open road; that it is an open road now; about the line of that 80. It crosses the slough. There is a culvert put in there. There is not a public road leading to this land. We swam on the bar in the upper part of the slough. I would judge the water was four or five feet deep where the word "21" in the circle is, before 1900. I should say it would be at

least an average of 10 or 12 feet deep in there now. That is my off-hand guess. I would not swear to it. It has been thirty years, I guess, or 20, since I have been there.

908 I am simply testifying from judgment. It is just a guess. I haven't been over there. If it should transpire that that slough was now about four or five feet deep my guess would not be a good one. I think, say along about 1890 or thereabouts that I commenced to observe these premises more closely. I knew these premises and the

909 crops that were raised there pretty well. In fixing the value I took into consideration all that I knew about those premises, productivity and returns and the market value and all those sort of things; rental and everything of that sort.

Q. Your father-in-law, Mr. Waugh, paid \$500 a year for those 450 or 60 odd acres, didn't he?

Objected to by the plaintiff; objection sustained; defendant excepts.

In placing a value upon these premises I took into

910 consideration, to a certain extent, what they did rent for. The rental was \$500, cash rental per year; con-

911 tinued up to the year 1900. After 1900 he didn't rent the premises. He cropped it under another arrangement. There was no fixed arrangement as to rents after that

912 year. He didn't rent the premises regularly after 1900. There was at least one year between 1900 and 1902 or 1903 that the entire bottoms were rented under the old arrangement of \$500 per year, and I think it was the year 1901. I think it was 1900 and 1901; for two years.

913 1902 was a very wet year. It was a flood year. Nothing was raised on the bottoms. The water came up to high water mark. During that flood year Mr. Waugh was apprehensive regarding the conditions of the land because of the flood that year, and it was apparent that no crop could be planted. Then he died in 1903.

- After he died Mrs. Waugh continued for a while. Before
 914 1900 the river got very high at times. Peru sits on a
 bench, or is high on the bluff. Water street is on a sort
 of first bottom or bench along the river. I remember
 one year when I was a small boy the water was over
 915 the street. I have seen the water spread from bluff to
 bluff at Peru. There would not be high water every year.
 I mean high water upon the street. There were freshets
 every year from melting snow and the spring rain and
 the water got high every spring as a rule. It would
 spread over the bottoms and would make a very wide
 river. At such times the boats that plied around the
 river there would go across the bottoms.
- 916 I have hunted ducks all over Section 21 in a boat.
 Put decoys out there anywhere where there were clumps
 of willows; and shot ducks practically all over the place.
 I also have seen very low water in the river at that point.
 I have seen the river when it was low and there was a
 917 skum, sort of a plant, on the river. They were very com-
 mon. At that time the current was very slow. Along
 the borders of the river and in the ponds on Section 21
 were favorite fishing places. When the river was high,
 extending from bluff to bluff, it was probably a little un-
 der a mile in width. Under ordinary conditions the river
 is 250 or 300 feet wide at that point. There is a well
 defined bank on the stream on the Peru side of the river.
- 918 There is a made bank just to the west of the point where
 the word "Illinois" appears, the bank is quite high right
 on the edge of the river. Opposite that point there was
 a low road running to La Salle. There was an embank-
 919 ment there at least 15 feet below the low water of the
 river. That was the old Water street. When the water
 would rise it would be up in Water street. The water
 would be shunted or deflected over to the lower land on
 the other side. There was a wash across this land. There

has always been a wash across this land in high water, it seemed to be through the old slough down towards the end of the south bluff of the river. It went around through an old channel there. As soon as the water got high it swept across the field and started to cut in through the other way. The current was slower in those days
920 than it has been since. Since 1900 the current is considerably swifter than it used to be. The current is probably twice as swift as formerly. There is a constant steady flow all the time. I wouldn't say that the current is twice as swift now under the old slough bridge, but it is noticeably swifter. They rip-rapped the bottom road to hold it. I think that before 1900 the crops would go maybe 60 bushels an acre. I base that statement upon the statistics given by Mr. Waugh in family councils, re-
921 garding conditions there. I never farmed bottoms myself and I am testifying nearly about what has been told me in regard to it. I have no other knowledge on the subject. I assumed that what was told me was true. That is the sole basis of my information. I learned through the newspapers and announcements made regarding the opening of the Sanitary District. There was not any noticeable change in the river, not an immediate change. During 1900 and 1901 the change was very slight and in 1901 we had an extremely dry year, dry hot year, and the river was very low in the spring and summer of 1901. For the first two years after the Sanitary District was opened there was a low condition of the river; without reference to what was the cause, that is
922 the fact. I believed that from information I received through newspaper rumors and other information that came from men who had inspected the controlling works, that they did not have the full flow of water coming down the river. I don't know in actual cubic gallons or inches what the flow coming down at that time was. I have no

definite information on that subject. I only know that there were rumors that they were not allowing the full legal flow to come down the river. It was common newspaper report and common report from people who had made a little investigation. It was common knowledge. It is true that every time it rains they will say that they are opening the Bear Trap Dam and I think they do. That is my opinion, that every time there is a rain in this valley or any raise in this river, that they open the

923 Bar Trap Dam. I am not guessing on that subject for the benefit of this jury. I am basing my opinion on what is actually flowed, from talking to people who have pretended and claimed to be posted, who were reliable men. The river is rising now. It is quite high at present. I noticed it this morning. There has been a rain within the past two days. I think that the opening of the Bear Trap Dam and the rains within the past two or three

924 days accounts for the rise in the river. I couldn't swear positively that there has been any change in the flow on the part of the Sanitary District. I remember that in 1901 the river was remarkably low. I couldn't give the absolute dates. There was no perceptible rise in the

925 river in the years 1900 and 1901; 1902 there was, because of the great rains; 1903 there had been considerable snow and in March it turned very warm. I remember that in March that year the roads were impassable over the bottoms. They were covered with water and we had to drive away around a very considerable way to get to the farm house on the place south of Section 21; and the spring months were quite wet that year, as I remember; and when the heavy snows melted the river was very high. I couldn't say definitely after the water got settled in May and June, 1903, that the river was higher that year than in corresponding Mays of previous years.

926 Taking the year 1904, I don't think that the river was

higher in May than in any previous corresponding May. The bottoms were not overflowed during the summer months. They raised a crop on this land in 1904, a good crop. I am not absolutely positive as to there being a crop in 1905. There is a corn crop on the land this year, 927 I suppose. I should say that there is in the neighborhood of 165 to 170 acres planted in corn this year. I would say about 50 per cent. of the land is in corn this year; not to exceed 50 per cent. I should say about 200 928 acres of this land is in corn this year. I don't know the exact acreage of Section 21. My estimate was that there was 375 to 400 acres of land available for cultivation; and I think one-half of it is under crop this year. I have not been there to examine it at all to tell whether it is a good crop of corn or not. It looks like a good crop from 929 across the river. The corn seems to stand well. I don't think they are done picking the corn yet. I think they are just about done. I have not seen any of the corn raised there this year. They had a good crop in sight last year on this land. It was mature. The river came up and destroyed a great deal of it. I never saw them pick corn in boats on this land. I saw them pick some 930 corn last year on the ice. I have heard of cattle being drowned on Section 21 before 1900, and being caught there in the slough and swamps. I think since 1900 the river does not go down so quick. During some years the water stays on the land pretty late in the summer. There always has been and I presume always will be a difference in years. Since 1900, generally speaking, the 931 water gets off the land before the 20th of June. It is a very porous soil. When the river falls sufficiently the land drains off very quickly. The land does not dry out or bake like upland does. There is always sufficient water by capillary attraction from the water under the land. 932 I never knew of a drought on this land. The land seems

to divest itself of the water very speedily. After the water was off the land two or three days you could plow it. I think there is some uncertainty in regard to using that land for corn at the present time. I am not a
 933 farmer. I am fairly well posted regarding farming conditions. Corn is the crop that takes the most time to raise, for the growing period, in this section of the country. It requires approximately 100 days for growing, in a favorable season. In raising millet and small grain in the bottoms, weeds grow there very profusely and the grain crop would be smothered out by the weeds. You
 934 will also have a great deal of trouble with weeds along a river bank, which is against raising that kind of a crop. I don't know how long it takes to mature millet. I don't know anything about a crop of soy beans, nor millet, nor sweet corn for canning purposes. That has been discussed in a general way, but I don't know anything definite about it. They have raised some garden crops over there in the bottoms and they grow all right. They have raised pop corn over there and the land, the soil, would be available for the raising of vegetables of all kinds. They raised sunflowers over there for chicken feed. I
 936 have observed this year that they are raising the corn for silage purposes. It seems to be more and more of a general proposition this year than ever before. I should say that it takes 90 days to raise corn for silage purposes. I should say it takes 90 days to raise corn for
 937 that purpose. My answer is a pure guess. I don't know about it positively. There would be no trouble about raising corn on this land and putting it in a silo. The question would be to market the silo. There is nothing to prevent anybody who has cattle from raising corn for silage and feeding the silage to the cattle. There is a great deal of that being done this year. I think this land
 938 will raise turnips. If it was not for the overflow and the

risk of destruction of the crops on the bottom land the land would be very valuable for any of these purposes.
 939 I don't think there has been any serious overflow between July 1st and November 1st any year since 1902. I don't think that there has been any overflow during any summer months.

Q. I will ask you if it is not true that on the 18th of
 940 February, 1911, that there was sold land similarly situated just across the river, land fully as low as the land involved in this proceeding, 25 acres, for \$2,556, and that there was reserved from that sale all minerals and the road and a pipe line and other reservations; that being more than \$100 an acre for land similar to this?

Objected to by the plaintiff; objection sustained; defendant excepts.

Defendant offers to show by this witness that on the 18th day of February, 1911, there was sold land similarly
 941 situated to the land in question, Section 21, and concerning which the witness has expressed an opinion, twenty-five and fifty-six hundredths acres of land for \$2,556, and that from such sale was reserved the minerals, the road, and a right of way for a pipe line, which ran across the same.

Description of the land read as being in Section 14, township thirty-three, north of range 1, east of the Third Principal Meridian.

943 Objected to by the plaintiff; objection sustained; defendant excepts.

Re-direct Examination of the Witness William Means by Mr. O'Connor.

The place where Samuel Waugh lived was on Section
 944 28 and was within about five hundred feet of Section 21. When the river was low we would go on the bottom road

to Mr. Waugh's place, crossing the bridge over the Illinois River at Peru, following south along that road and across the slough bridge. The house was located on a bluff or a bench on the side of the bluff. Up to recent 945 years there was a heavy strip of timber along that slough on the west side of the land. At one time, while Mr. Waugh was renting this land from the La Salle County Carbon Coal Company, George Brown was in partnership with him. That was about '94, I think, and then they dissolved. During the time that Brown and Waugh 946 rented the land they cut off the timber; principally in the southeast corner. I don't know how much timber 947 they cut off. There was a road built upon Section 21 since the year 1900. I am not positive of the year, but I think it was since 1900; entering across the pond to the center of the land. The road was built from the turnpike 948 running south from Peru. I think it was pretty nearly in the center of the section. There has always been a broken, rough road there. There wasn't any established road; going in there from the south of Waugh's place the road was a beaten path. There was also a road built in there about 1905. The Carbon Coal Company had some grading done there and small trees were planted along the east side, with the idea of holding the road.

949 Q. In giving your valuations on yesterday, Mr. Means, if I understood you correctly, you said that the land to-day was worth from \$40 to \$50; is that correct?

Objected to by the defendant as not being re-direct examination; objection overruled; defendant excepts.

Q. * * * To what parts of the land did that valuation apply? A. Why, to the land that is cultivatable. That is above—on the high ground. * * * the land that is overflowed is considered worthless, a lot of it.

Motion by the defendant to strike out what he con-

siders worthless; motion overruled; defendant excepts.

951 *Re-cross Examination of the Witness William Means by Mr. Chipperfield.*

When I testified as to what the land was worth I left out the coal.

Motion by defendant to strike the testimony of the witness upon that point; motion overruled; defendant excepts.

Mr. CHIPPERFIELD: Your honor, I would like to be heard briefly upon that motion. * * * There is only one test of value, if your honor please. The test is what was the fair, cash market value, before and after, including the entire estate. A man cannot take the surface and separate it from the rest and make a valuation on it in this kind of a suit. I merely want to call your honor's attention, which doubtless you have already seen, as to the point I have in mind. I want to be fair on the proposition, but it cannot be possible to separate an estate and fix valuation in that way.

The COURT: I think I will adhere to my ruling.

Defendant excepts.

953 JOSEPH GREINER, a witness for the plaintiff, testifies as follows:

Direct Examination by Mr. Butters.

My name is Joseph Greiner. I live in Peru. I have lived there 44 years. I have farmed the biggest part of my time. I worked for a man by the name of Samuel Waugh, who had possession of the land in Section 21 shown on this map. I moved from there 14 years ago. I

worked there four years. I had my family and lived over there up on the hill.

954 I lived about half a mile up from the bottoms, south
from the river. I don't know whether or not it was on
Section 21. There was a road in there where I lived; a
road past the house and running north and south for a
955 mile. There was a house and farm buildings there where
956 I lived. I think I was there about 1898. I think I com-
menced to work there in 1894, in January or February. I
think I moved there in February. The first work I did
957 that year was to haul crops out of the bottoms. I am
acquainted with McCormick's slough. It is on this land.
It was there at that time. There was corn raised on this
960 land at that time. They had raised a good crop the year
before, a crop of corn. We started in on the prairie first,
that year, planted the prairie first and then the bottoms.
961 I think that was about the latter part of May that we
plowed and got ready for planting. I think there was
about 300 acres of land worked and planted that spring
on Section 21. There is pretty nearly 400 acres, I guess,
of land there. There was corn raised on all of it that
year, except where there was timber. You could drive
962 from one end of the corn to the other. It was planted
in one piece and was cultivated to the river bank. The
longest rows were 120 rods and we planted from east to
west. The soil of the ground was in good shape the lat-
ter part of May. It is a good sandy loam. I know about
963 the productiveness of the soil from examining it. It was
a good soil. I also have farmed upland. Bottom soil
will grow a crop quicker than prairie soil will.

Defendant objects to the comparison; objection over-
ruled; defendant excepts.

964 I had nothing to do with any of the land there except
the land in Section 21. We cultivated it three or four
times that year. There was no overflow from the river.

We had a good crop that year. They had a good crop
 965 each of the four years I lived over there. I mean by good
 crop, we had a full crop of corn. The crop would aver-
 age as high as 70 bushels an acre. We turned the cattle
 into the stalks. Mr. Waugh turned them in. We finished
 husking somewhere about Thanksgiving. The water
 never interfered while I lived there, in the four years,
 with this land. Cattle would remain there and feed all
 winter. There was only one winter I remember towards
 the spring that we drove them off. The water was ris-
 966 ing and the bottoms were pretty well eat out and we
 turned the cattle out onto the prairie. That was about
 February. I was born in this country. I have an opin-
 ion as to what was the fair cash market value of this land
 in Section 21 in the month of January, 1900, before the
 Sanitary District of Chicago was opened.

Objected to by the defendant on the ground that the
 witness does not show any acquaintance with the
 land immediately prior to that time; objection
 overruled; defendant excepts.

I think the land was worth at that time \$100 an acre.
 968 Since January 17, 1900, the river is higher. It is four
 feet higher. I live now in Peru. I have known this land
 and what has been growing on it since 1900. They have
 969 got half a crop of corn there.

Q. Where is it with reference to where corn used to
 be, used to grow there while you were there? A. There
 used to be corn all over it, on every bit of it, when I lived
 there.

Motion by the defendant to strike out the answer as
 not being responsive; motion overruled; defendant
 excepts.

970 The land is cultivated now in patches. I have not ex-
 amined the corn that is there this year. I go into these
 bottoms every fall. There is little good corn raised there

since 1900. Most of it is soft on account of not getting in there soon enough in the spring. I think that the fair cash market value of the portions of land where they
 972 have crops—where there is a crop this year on this land,
 973 I think it is now \$25 an acre. I don't think that the land upon which no corn is now raised, since January, 1900, is worth a dollar.

*Cross-Examination of the Witness Joseph Greiner by
 Mr. Chipperfield.*

I have talked with the attorneys for the plaintiff in
 974 this case about the case. I talked with them yesterday about 15 minutes and had spoken to them since the last witness left the stand. I was not advised as to what value the last witness fixed upon the land. I took into
 975 consideration that this land, all of it, is underlaid with a good vein of coal. I still think the land is worth nothing. The coal land may be worth something; I don't know
 976 anything about coal lands. It is worth something if the coal is there. I don't think that the land is valueless if there is 3,500 to 5,000 tons of coal per acre under the land.

Q. Don't you know, as a matter of fact, that at no time since 1900 could that land have been bought for \$100 an acre?

Objected to by plaintiff; objection sustained; defendant excepts.

977 Probably the market value of this coal for coal purposes in 1900 was \$100 an acre. I have given my opinion about the price of the surface of this land only as a
 978 farming proposition, and I did not take into consideration whether there is coal there. I know that the La Salle County Carbon Coal Company is mining in that vicinity. I know they have entries extending into this land, but I

don't consider the question of coal. I am talking about
 it merely for one purpose, and that for an agricultural
 purpose. I don't take into consideration any other pur-
 980 pose other than that simply for farming. I have not
 seen them hauling corn this year. They can't haul a very
 big load. I know they have sideboards on the box for
 throw boards. I have not seen this corn come out. All
 I know is what I have been told. It is purely hearsay
 981 with me as to what they are doing in there. I have been
 982 over the bottoms this fall. I was there two weeks ago
 Sunday. I was on Section 21. In 1894 we planted about
 983 from 100 to 125 acres. There was somewhere close to
 400 acres in it all told. Last year it was all planted. All
 except a little timber land in there; I couldn't say how
 much timber was there. The slough wasn't planted in
 984 1894, nor the timber. The land down by the bend in the
 river only was planted. We planted that year the latter
 part of May and first of June. The water didn't rise
 986 on this land every year. There never was a corn crib
 constructed on Section 21. I don't know why. There
 was some building on that land. I would run a chance
 of having a house erected on that land today. I think
 987 they could have raised millet on that land this year.
 Probably could have got it out. If millet would have
 matured thirty days ago they could have got it out, of
 988 course. It is now way past the time for cutting millet.
 They could have cut it this year. I think they could
 have got a crop out last year, of millet. I couldn't say
 989 about other years. Sugar cane is not worth anything
 for feed, not that I know anything about. I don't think
 you could raise much garden truck there. It would cost
 you more than the truck would be worth to keep the
 990 weeds out of there. Certainly, it would grow. I don't
 know much about garden truck. I don't know of any
 transaction in that neighborhood where any land has

changed hands for \$25 an acre since 1900. I am merely giving my own idea as to its worth. If I were to buy that land I wouldn't give any more than \$25 an acre for it.

991 I am just talking about cultivating it. I am not talking about what the coal is worth. I hauled crops from this land in 1894 for Mr. Waugh, to the Carbon Coal Company. I think the river in an average season, is four feet higher than it used to be before the Sanitary District channel was opened. I don't know whether there is any gauge on the La Salle Dam on Lock 15. I have no

992 idea as to the depth of the water in the river at the present time. It is within the banks. Opposite this land about two feet below the land. It is not a time of low water. There is a good medium stage of water in the river. In the lowest water that I have ever known in the

993 Illinois River, before 1900, it was four feet lower than it is now. I would say that the river was six feet at low water, lower than at present. I know nothing about gauge readings at La Salle at any time, nor what stage the water stood on the gauge at La Salle. I think the

994 water stands four feet higher than it did before the year around; at extreme high water it is four feet higher than extreme high water was before the Sanitary District was opened, the year around, and at low water is four feet higher than it was before that time. I don't remember

995 whether the Illinois River, in 1901, during July and August, was the lowest water ever known on the Illinois River. That was nearly a year and a half after the Sanitary District was opened. I don't know anything about

996 the high water of 1892. Since 1900 the water from the river has got into Water street. Water street has been raised maybe a foot or two feet. Since 1900, the river has come within two feet of the present surface of Water street. I did say that the river at high water, since

998 1900, has been four feet higher than the high water be-

999 fore that year. I said it because I know it was that way.

The river at Water street has washed out the Q. tracks.
 1000 I have not observed the current of the Illinois River. I
 never did. I don't know whether the stream is flowing
 swifter since 1900 than formerly. We used to be able
 to catch some fish down there. We are not able to now.
 1001 They couldn't live in the water. That is what they tell
 me.

Q. Don't you know as a matter of fact, that at the
 present time the fishing industry of the Illinois River is
 greater than that of all the New England states put to-
 gether?

Objected to by the plaintiff.

Mr. CHIPERFIELD: This man says that fish won't live
 in the water and I want to follow it up, or have it stricken
 from the record, your Honor.

Objection sustained.

Mr. CHIPERFIELD: Then I move to strike out his state-
 ment concerning fish.

Motion overruled; defendant excepts.

1002 I don't see where the fishing industry on the Illinois
 River is greater than it ever was before. I can't see that.
 I have never seen any fish that have been killed by the
 water. They don't stay long enough to die. They don't
 stay up there long enough to die. I don't know that the
 1003 water of the Illinois River is purer and less foul and
 less odor than before 1900. I don't say it is not true.

1006 HENRY REAM, a witness called by the plaintiff, testified
 as follows:

Direct Examination by Mr. O'Connor.

My name is Henry Ream. I live at Peru, Illinois. Have
 lived there since 1852. My present occupation is bank-

ing at the Peru National Bank; since 1883. The bank does a general banking business. I am president of the 1007 bank. I have been president nine years; formerly was cashier of the same bank; since 1883. The bank is located on 4th street, on the bluff, on the hill in Peru, since 1904. During that time the bank was located on Water street. Water street runs parallel with the Illinois River, the entire length of the town, almost. Water street 1008 is possibly fifty feet from the river. I am acquainted generally with the bottom lands that lie south of Peru. The general level of the land in the bottoms is lower than the level of Water street. I was acquainted with the lands farmed there for a number of years south of Peru 1009 by Mr. Waugh. That land lies lower than the level of Water street in Peru. Fourth street in the City of Peru is higher than Water street; I should judge about 15 or 1010 16 feet. I live the first street on the bluff. I was acquainted with the uses to which the land in Section 21 was put prior to the year 1900. You could see that land, standing on Water street in Peru, and you could see it going up the bluff from Water street to my home. You could see all of it from the bluff. I think that all of the land in Section 21 lying to the west of McCormick's slough was in cultivation. Corn was growing on it. It 1911 was then under the care of Mr. Waugh. I was in the habit, in my banking business, of making loans on land. I was acquainted with the fair cash market value of lands located in the vicinity of Peru, in the year 1900, prior to 1012 January 17th. I place a valuation on the land in Section 21 at that time at \$100 per acre. In a general way I was acquainted with the condition of the Illinois River, prior to the year 1900. I have not been acquainted with 1013 the condition of the Illinois River since 1900. I have seen the lands in Section 21 since 1902, from the bluff, and driven several times during the year past the lands

on what we call the Wall Road. The Wall Road is south of the lands in Section 21. The road would take you on the bluff on the south side of Section 21. I have noticed the condition of the land as to crops. It was partly
 1014 planted and partly in weeds. I think about one-third of it was planted. It was planted in corn. I think it was planted irregularly instead of being in square pieces.

1015 Q. What, in your opinion, would be the fair cash market value of that land in the year 1900, on the 18th day of January, taking into consideration the facts in relation to the Illinois River and the flow of the same, as you know them at this time?

Objected to by the defendant; objection overruled; defendant excepts.

Mr. O'CONOR: If you have an opinion; just add that.

Objection renewed; objection overruled; defendant excepts.

1016 I think the value would be considerably less. I consider that land worth about \$25 or \$30 an acre, now. I refer to all of the lands in the bottoms, in placing that valuation, located on Section 21. I have been across the
 1017 lands and around the Illinois River probably a dozen times a year since 1900. I have noticed the changed con-
 1018 dition of the river. The stage of water is higher. The water being higher in the river, I think has the effect of making the ground in the bottom lands appear to be full of water, soggy.

Cross-Examination of the Witness Henry Ream by Mr. Chipperfield.

I have not been on the lands since 1900, for the purpose of making any investigation. I simply passed by them, seeing them as I passed by. I am judging of the condition of the land from the appearance of it only. It

- 1019 seems to have a wet appearance. Black soil has more of a grayish appearance, I think, when it is dry. I think I could tell whether the soil is moist or not from the road, from the road to the land, the west line of it, is something like four or five hundred feet. The Brown land lies in between. I should say that anywhere in the month of September the ground looked dark and full of water. I couldn't tell how many times I have been over there since 1900. I should say about a dozen times a year I
- 1020 go over there. I have fished a great deal over there. I go fishing in the fall in the slough and river, any time until it freezes up. I think I was fishing there last year, about the latter part of September. I wasn't particularly noticing the land at that time, and did not make any particular observations. I don't know that I ever made any particular observations of this piece of land. I don't
- 1021 know that they have been going in there with wagons and taking out the corn since 1900. I presume they have, though. I don't know whether the wagons could go in there and pick corn. I am not interested in any litigation against the Sanitary District, nor with the La Salle County Carbon Coal Company. I don't loan bank funds
- 1022 on land. I loan private money. We have a few loans as a national bank. We have taken some loans as late as 1911 to secure a debt. I was not generally engaged in the real estate business in about the year 1900. I own
- 1023 some real estate myself. I don't own any farm lands and did not in 1900. I cannot recall any farm lands changing hands in the vicinity of Section 21. I took into consideration, in fixing the value of the land at \$100 an acre, that, at the time the land was producing a sufficient quantity of corn. That is, equal to the prairie land. For that reason I believe it should be valued at about the same. My opinion was fixed upon the basis of comparison. I could not name any tract of land on the prairie

that in 1900 was worth \$100 an acre, but I think it was. I think it was selling for at least \$100. I can't recall any land—upland—selling at that time, about 1900, for about \$100 an acre. I knew that this was bottom land. There are no houses on Section 21. I don't know whether it would be washed away if one was built there or not. I always knew that this land was submerged whenever the river rose to any considerable extent, and, under those conditions it would not be a very habitable place. I cannot recall that there were any fences there. I can't recall of any other than a few corn cribs on the Waugh farm, right near the bottom land. As far as I know there
1025 were never any buildings located upon Section 21. You could not keep stock there the year around. I cannot recall of any cattle being drowned over there, but I have heard of it. I cannot recall the facts. I should say that with the conditions obtaining there that the selling market value of lands in 1900, for the bottom lands, were as good as the highlands. There was very little land sold there. I don't remember of any land being sold for that price similarly situated and in the vicinity of Section
1026 21. I don't know anything about the land being untiled. I had in mind the producing value of the land, which was equal to that of, perhaps a little bit better than the high bluff land. I did not take into consideration in placing the value at \$100 an acre that the land was underlaid with a high grade of coal. I think that
1027 is the fact. Coal has been optioned all over this country for \$10 an acre. I don't know whether coal situated as it was under this land, adjacent to the City of La Salle was worth on the market, in 1900, the sum of \$100 an acre. I had no occasion at any time to figure out what
1028 an acre of coal is worth to anybody. I believe the thickness of the coal vein in that vicinity is something like three feet. It ranges from three and a half to five feet,

the second vein does. There are two veins of coal on this land. Taking the coal under an acre of land, it certainly was worth more than \$100 an acre, but whether
1029 it could be sold for that is a question I cannot answer you. I am familiar with the coal industry in that vicinity and it has reached a high stage of development and had in 1900, and La Salle and Peru coal was much in demand on the market. It was regarded as a high, splendid grade of coal. There was a market for all that coal that could
1030 be mined and a demand for it. I never heard of \$100 an acre being paid for coal and I don't know whether this land was worth \$100 an acre for coal mining purposes. I can't answer that. It is something that doesn't come within my scope of knowledge to know whether that coal under the land would make it worth \$100. I will say this, that I believe, taking out that vein of coal under an acre of that land, that it is worth it, taking it out and selling it. It would be worth a great deal more than \$100. I am not able to answer whether lying as this land
1031 does it would be worth that sum or not. I am not well enough acquainted with the conditions of the coal. That is the best answer I can make to that question. When I placed my value of \$25 to \$30 an acre on this land I took into consideration the agricultural prospects only. I considered the land as an agricultural proposition. From where I would observe the land on the bluff, from my residence, would be about a half a mile from the land, across the river bottom. My attention was not specifically and closely called to this Section 21. I don't know, from my house, or at the bank, where the boundaries of
1032 Section 21 commence and end. I could not tell you now from this map where the outlines are. I could tell how far south it ran from my house. I could tell from the fact it runs up to the bluff, right to the bluff, and the dwellings attached to that farm, to the Waugh farm, are

on the bluff. They are up high. I could tell from my
1033 house that the vegetation seen there was corn. I think
it was corn every year. I cannot recall the crop of 1892.
I could not state whether there was any crop in 1902 or
whether there was any corn grown there in 1904. There
were several years, off and on, there was no corn raised,
on account of overflow, but I cannot recall the years. I
1034 remember the high water of 1893, and that the water
came up to where our bank was then located on Water
street. I could not say how many times I remember the
high water coming practically up to Water street before
1900. I should say that Water street was five or six
feet, maybe more, above this land. It might be 15 or 20
feet. I guess it is higher, come to think about it. I
would take the level of the street and compare it with
the water level. I guess it is higher than five or six
1035 feet. I should say probably 10 or 12 feet. Of course,
this is all guess work with me, so far as measurements
are concerned. If the water was in Water street there
would be 10 or 12 feet of water over this land. I have
seen row boats plying over these bottoms outside of the
river channel. I never saw steamers out of the channel
of the river that I can recall. I don't know anything
about the high waters of 1883 or the high waters of 1892.
1036 I couldn't say about the highest water before 1900, how
it compared with the high waters since that time. I am
1037 not posted on different heights of waters in different
years. I don't know of a year when there was high water,
before 1900, but I remember there was high water years
before 1900, and I cannot recall any of the high waters
that came as high as since 1900. Never had occasion to
remember or kept any record of the low waters before
1900. I cannot answer any question on that subject. I
1038 don't know anything about the low water of 1901. Gen-
erally speaking, I think the water is higher in the river

at all times of the year. I know that the river is higher than it was before the drainage canal came in, because I am told so by the man that keeps the records over at the river bridge. That is what I am basing my opinion on as to the level of the water. I compare the river with
1039 the years way back before the drainage canal came in. Take any years previous to that. I couldn't say whether the river was lower during September, 1901, than in
1040 1893. I don't know whether I am comparing stages of water before the Henry dam was put in or not. I could not say whether the dam was in or not. I don't know how many feet the Henry dam would raise it, but it raised it some. I can't say or pick out any time the river was higher and compare it with a similar time in any other year. I never tested the current of the river to know whether it was faster. I have not made very much observation of river conditions, nor kept track of the stages of the water. I didn't do that. I think before the dams were put in the river was lower than it has been since 1900. I refer to the Henry dam. I have not
1041 kept any record of those things. I merely expressed my opinion when I was asked the question and thought I was expressing it right. I have not an opinion as to how much the river has raised. I really cannot say. I only casually observed these conditions. As I said, I never kept any record and could not be accurate about
1042 it. They used to plant these bottom lands in the latter part of May or beginning of June, I think. I imagine that since 1900, the water gets off these lands about the latter part of May or beginning of June. I am acquainted with the corn and other farm crops and the methods of raising them. I have not farmed for a good many years. I lived on a farm when I was young. I don't know that they have raised any other crop than corn there. I don't know whether the land would have a value

of raising of crops that require a shorter time than corn.
 1043 I don't know whether other crops could be raised that
 would mature between the 1st of July and the 1st of
 October. I am not well enough acquainted with the dif-
 ferent grades of crops that might be put in there and
 mature. I always looked on it as corn land. I think
 this land would have a value if it is possible to raise gar-
 den crops or crops for forage purposes and if silage could
 be raised on the land. Of course, those things would
 1044 have to be proven to see that it could be done. I don't
 know that silage corn has been raised on land similarly
 situated and just a short distance from that. I don't
 know of any silos on Mr. Duncan's land. If those things
 could be done the lands would be valuable for that pur-
 pose and would indicate a greater value than I men-
 tioned. I have based my answer as to values upon the
 impracticability of raising a fully matured crop of corn
 on this land. I cannot recall at any time that these lands
 were overflowed between the 1st of July and the 1st of
 1045 November. It might be possible they have overflowed.
 1046 I am not sure whether it might not. I have no recollec-
 tion of this land being overflowed in any way between the
 1st of July and 15th of November.

1047 HENRY MYER, a witness called by the plaintiff, testified
 as follows:

Direct Examination by Mr. Butters:

My name is Henry Myer. I live in Peru. I am bridge
 tender on the south side of the river bridge. That is
 across the river just where section 21 is located. I have
 been in that employment for six years. Prior to that I
 1048 was on a farm, a mile and a half or two miles south.
 I lived there two years. I lived there three years. That

is three blocks up the hill over there. I lived on Sam Waugh's place. Waugh's house, where I lived on his place was up on top of the hill. I lived in that place
 1049 three years. He had section 21 rented from the Carbon Coal Company. Prior to working for him I lived in town. I knew this land before I worked for Waugh. I have known this land since 1889. The first year I worked for Waugh was in 1894. I don't know exactly the acreage. There was some bush land besides the farm land shown on section 21. I think there was from fifty to seventy-five acres of timber. I was the hired man and did the farm work. They raised corn on this land. The corn was raised all over it. This land was all fit to
 1051 raise corn and that is all that they did with it. We would go on the land to cultivate it about May. We generally got through planting about the 1st of June.
 1052 It was a black soil. They always raised good crops to 1894, when I worked for Waugh. The crops would run from 60 to 80 bushels to the acre. The corn was of good quality. I mean it was sound corn. I worked there
 1053 all told seven years. I lived there in 1901. During the years that I worked for Waugh we let the cattle go in the stalks in the winter time. There was times when the cattle were not in the stalks during the winter. I know a couple of times; I don't exactly know what years. The water came up. That is the reason they were not turned
 1054 in. That was around January, about Christmas, there was a lot of cattle, 150 to 200. There were no fences put up to keep them in during the winter on any part of the land. After I left Waugh I worked at Kale's
 1055 place and went over past this land in section 21. Was there about the year 1902. There was nothing raised there at that time. Everything was overflowed there. Since I left there the crops on the land some years were pretty good, and some years not. I never worked on

1056 this land after I left it. I saw it about every day.

I should say about one-third of it has been cropped since I left there. The other two-thirds had overflowed. Only weeds growing on it after the water went down. I don't

1057 know how many acres of corn is there this year on section 21. I should say about a hundred acres. I have not examined any of the corn. I can see the corn field from where I live. I never was in it. I have a view from my place of business at the river bridge over this land.

I don't know exactly about the depth of the water in 1058 the river. The water is higher in the river since January, 1900, than it was before that time. I should say from four to five feet about. I can tell by the piers on the bridge and on the break water, on the ice breakwater. The ice breakers are located on each end of the bridge. On the east side there is a water gauge. There is marks by the inch and by the foot. I saw that the water is not

1059 five or six feet higher than formerly. I don't know anything about it except what I have seen on the piers. I think that this land in section 21 had a fair cash market value of about \$100 an acre in the month of January, 1900,

1060 prior to the turning in of the water. I think that the same land and the land that is in corn this year, upon which corn was planted and raised this year, was worth on that same day, after the water was turned in, about one-third of that. Land in section 21 on which no corn has been grown this year, I think the land is worth

1061 nothing. The water comes up over this land and has come up over it since 1900. It comes up in the winter and spring. It doesn't go away like it used to. It stands there. Before 1900 the river would go quicker down. I

1062 know the effect that had on the soil there on its productiveness. Nothing will grow on the low ground.

*Cross-Examination of the Witness Henry Myer by
Mr. Chipperfield.*

I am the bridge tender. I do not keep any gauge. I
no not keep any record at all. I tend the Peru river
bridge, wagon bridge. I think the bottom lands in sec-
tion 21 are practically worthless; not worth anything.
1063 I have some land rented there in the bottoms for Brown
for truck purposes right there at the bridge and I have
some rented for next year. I paid nothing for it this
year. If I raise a crop I pay rent and if I don't I pay
1067 nothing. I have rented lands for cash rent in the im-
mediate vicinity of this land. That is, if I get a crop I
pay cash money, \$6, an acre. I didn't get any crop this
year. I raised very little in my garden this year.
I didn't have enough for my own family. Of
course, I couldn't get it in early enough and the ground
was no good. It wasn't the water that killed it out; it
was dry. I asked Mr. Brown if he will give me a strip
for next year and he said he couldn't tell. I have been
at the bridge six years. There is a gauge at the bridge.
I don't read the gauge. I don't know anything about the
zero of the gauge on the bridge. The gauge is nailed on
1070 the north side of the river and it sticks in the water. I
never took any notice of where the water stands on the
gauges at a low stage of water. I never marked it down.
I am not paid for taking care of it. The job of keeping
the gauge for the Sanitary District was never offered
1071 to me. I told one man this summer that the job of
keeping the gauge ought to belong to the bridge tender.
That is what I meant a while ago when I told you to
ask the man whom the Sanitary District paid for watch-
ing the gauge. No sir, I am not a bit unfriendly because
the District didn't employ me to keep the gauge. I have
no feeling in this case. Of course, if I would get paid for

it by the Sanitary District I would mark it down, yes sir.

1072 Q. Isn't it true that you have made the statement at different times that you proposed to get even with the Sanitary District because they didn't employ you to read the gauge? A. Well, I didn't say I wanted to get even that way.

Q. Didn't you say that in substance? A. I only said that it belonged to me.

Q. But it is your opinion that the job does belong to the bridge tender and you ought to have the money? A. I ain't particular on that.

1073 I have made a study and looked to see whether or not there was a difference in the height of the water on account of the fishing business. I know where the river stood before 1900. I was engaged in farming before that. I used to drive over the bridge. I made marks of high and low water before 1900. While I was still work-

1074 ing on section 21. I could see how high and low the water was the way the steamboats go. I made those marks on the pier. I didn't go down to the piers to mark it. I could see how many rocks was on top of the water. There was 15 on the south side pier. The last pier. They are still standing there in the same condition. I counted the number of rocks and saw there were 15 rocks above the water in that pier when it was in low water, the very lowest water. I didn't measure those
1075 rocks, exactly. I judged them about 15 or 16 inches; and between the water and the bridge there were 15 of them. I saw the low water of 1901, after the Sanitary District was opened. 1901 was very low water, about as low water as I have ever known on the river. There was about that many rocks above the level of the water in
1076 1901. I have counted the very lowest water that I

could find and found that there was 15 rocks above the water. There was about 12 rocks above the water now and this is a comparatively medium stage of water. The present stage of water in the river has been added to by the fall rains and the water is moderately high at the present time. I didn't count those rocks this morning.

1077 I say that the land there where there is no corn this year is worth nothing, has no market value, and that nothing could be obtained for it on the market if it was offered for sale. I don't know if the coal is sold or not. I don't know whether that land is worth \$100 an acre with coal lying as it does, or not.

1079 CHARLES MUDGE, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Charles Mudge, I live four miles south of Peru. Age 44. Occupation farmer. Been farming all my life.

In traveling from Peru to my farm, I cross the Illinois river bridge located west of the Waugh land. After crossing the bridge going south across another bridge over the McCormick Slough.

1080 Knew Sam Waugh in his lifetime. Waugh from 1890 down to 1900, lived in the city of Peru and was farming land in section 21. The farm house and other buildings

1081 connected with the land were located 40 rods or more from the farm land.

During the years specified I knew those lands on section 21 to a certain extent. In 1893 and 1894 was there

1082 one day in the week during May and June; other years three or four times a year. I do not know the acreage

but they were raising corn, no timber except small
1083 bunches. Soil black loam.

1084 During 1893 and 1894 I saw corn growing on this place.

1085. Outside of those years I was there three or four times
during the summer.

1086 During the years 1893 and 1894 practically all of this
ground was in corn. It appeared to be planted regularly.

1087 During those years it was good corn. 1892 was a wet
year, nothing raised on the bottoms. Between 1895 and
1900 practically all of the land in corn. After the corn

1088 was husked cattle were turned in.

Q. Now, Mr. Mudge, from your experience and knowl-
edge and your acquaintance with this land, I will ask
you to state what in your opinion was the fair cash mar-
ket value of the land in the year 1900 in the month of
January prior to the 17th day.

Objected to by defendant; objection sustained.

Q. If you know.

The COURT: I will let him answer it now.

A. \$100 an acre practically.

Familiar in a general way with the condition of the
Illinois River at the time the Sanitary District water
was turned into the valley. The difference I have ob-
1089 served is that the banks are fuller of water, it comes
nearer to the top of the bank than it did prior to that.
Never took any measurements, simply my observation.

Since 1902, have been down to the house south of the
road. Drove along the road west of the land probably
twice a week. Observed crop conditions. Part of it now
1090 grown up in weeds and part of it under water. One-
1091 third in crop. The corn in small pieces, irregular.

1092 Q. Have you an opinion Mr. Mudge as to what the
value of that land was during the month of January in

the year 1900 after the 17th day, taking into consideration what you now know concerning the flow and condition of the Illinois River? A. I don't believe I just understand the question.

Q. Have you an opinion as to the market value of that land, the fair cash market value of that land subsequent to the 17th day of January, 1900, after turning in the water of the Sanitary District, and taking into consideration the facts which you now know? A. From a farmer's standpoint?

Q. Well, just have you an opinion? A. Yes, I have.

Q. What is that opinion? A. I have, yes.

Q. What is that opinion? A. From a farming standpoint it would not be worth anything because the taxes on the land and the expenses of farming that acreage would be so much; the acreage that would be fit for farming purposes, would leave no profit.

Cross-Examination by Mr. Chipfield.

1094 I do not know whether that land has raised more than 5,000 bushels of corn this year. I do not mean that the cost of raising 100 acres of corn is more than the price the corn will come to. The cost of raising corn is about 30 cents a bushel. We sold corn one time for 25 or 26
1095 cents a bushel but don't remember of selling any for 20 cents a bushel. The cost of raising 5,000 bushels of corn on that land this year would not exceed the price they would get for the corn. Know many men are successfully and profitably raising 20 to 40 acres of corn
1096 and up to 100. I do not say that the cost of raising this 100 acres of corn is more than it will come to. Don't
1097 think land which will raise 50 to 60 bushels of corn to the acre is worthless.

I said that in fixing the value of the land at nothing I took into consideration the taxes that a man would have to pay. I don't know what the taxes are. I do not know that the day never existed when this land was taxed by
1098 the assessor at over \$20 an acre.

1099 If it has been the practice to rent the land to tenants in small patches, I would not assume that one man was equipped to do the whole farming operation, and would not say that the cost of the taxes would preclude successful or profitable farming. The taxes would not exceed
1100 \$1.00 per acre. I do not know what the taxes are on this land.

When I took into consideration the \$100 that I considered the value of the land, I did not consider what its fair rental was after taking into consideration the crops
1101 raised on the land. I do not know that Waugh paid only \$500 a year for the lands.

Mr. CHIPERFIELD: If it transpires as has been proven in this case —

Mr. O'CONOR: To which we object.

The COURT: I sustain the objection.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Well, I think I have the right to ask the question.

The COURT: I don't think you have the right to state what has been proven by some other witness or what is already testified to, Mr. Chiperfield. As to that feature
1102 of it, I sustain the objection.

Exception by defendant to the ruling and remark of the court.

Q. Upon a basis of \$500 yearly rental for between four and five hundred acres of land in section 21, and

that rental existing from 1890 up to 1900, would you still say that in your judgment the fair cash market value was \$100 an acre?

1103 Objected to by plaintiff; objection overruled. Exception by plaintiff.

1104 A. Yes.

In valuing the land I would not take the rental into consideration. When I say the land is worthless, I consider it merely as an agricultural proposition and exclude every other consideration except as an agricultural proposition, and confine my testimony purely to the possibility of raising corn upon this land and am not considering
1105 anything else except a corn raising proposition and am ignoring the value of the property as a coal property and for every other purpose except raising corn.

I never knew the full number of acres that was in corn in any particular year between 1890 and 1900, but in my
1106 judgment I think there would be about 250.

I have seen 150 head of stock on the land. They could sustain themselves 60 days off of 250 acres of stalks.

1107 The river has been higher since 1900. I do not know that it is not true that the extreme high water was higher before 1900 than since. I remember the high water of 1892.

1108 Could not say whether it got as high as the high water of 1893. Have seen the road which I traveled entirely over-
1109 flowed before 1900 as well as since. Sometimes as much
1110 as ten feet of water on the land. No buildings on the land, no fences, stables, out buildings, corn cribs or any tile or small buildings usually found around farms. Don't know of so much as a smoke house or any other kind of a house being there. It would be flooded away if it was there.

1111 When I said I was going through the corn field I was going from my farm to Waugh's and then over to Peru.

1112 The road went practically straight north about through
the center of the section. It was a private road left for
1113 the convenience of those working the place.

1114 EDWARD PYKA, a witness for the plaintiff, being sworn,
testified as follows:

Direct Examination by Mr. Butters.

My name is Edward Pyka; I live at Cedar Point, five
miles south of Peru, for eight years. Farmer since 1893,
1115 in this and Bureau County. Known land on Section 21
for the last eight years. First saw it in 1893. Sam Waugh
was farming it then. Saw it about four times in 1893 and
1116 pretty nearly every year until 1901. Growing corn gen-
1117 erally when I first saw it. Saw the land pretty nearly
1118-9 every year and crops growing on it. In 1893 the corn
went better than 80 an acre. The stalks were big, high
1120 growth. The soil productive. There were 13 or 14 teams
working on the land.

Have an opinion as to the fair cash market value on
January 17, 1900. It was worth between 95 and 100 dol-
1121 lars. Have farmed land since then, farmed the east side
1122 of it, 80 acres on 21 somewhere near center of the tract.

Rented it in 1905. Got on the land that year the last of
1123 May and plowed 38 acres. The rest of it was wet, could
1124-5 not plow it. Got to the land on graded road up to it.

Weeds on the land not farmed.

1126 The Guest boys farmed 20 acres in 1905. Shank Cos-
1127 grove farmed some of the land, 12 or 14 acres. Another
fellow there out in the southwest section Gill McCable had
1128 about four acres. No other agricultural operations con-
ducted on that land that year. Continued wet until July.
1129 1906 I had the same patch, got the same amount. The
corn was soft in 1905; husked it the beginning of October.

1130 In 1906 we had a pretty fair crop, raised about the same quantity. Planted the rest of the land in June but the corn did not mature. In 1906 got about 1,200 bushels for
 1131 my share. It was good quality. Bottom lands are stronger and mature crops much quicker.

1132 In 1907 I rented 120 acres. Put about seven acres in that year. Did not mature any of it, the water was too high.

Judging from what I know would say the fair cash market value of the land on the 17th day of January, 1900,
 1133 after the water was turned in, was \$30 an acre, I mean
 1134 the land I farmed. The rest of it was worthless.

MR. CHIPERFIELD: Your Honor, just so today may not pass without a motion being entered, I want to make a motion to exclude the opinion of Mr. Mudge as to the value of this land. He stated he simply regarded it for corn raising purposes.

The COURT: Motion overruled.

Exception by defendant.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Recess until November 15, 1912, at 9 o'clock A. M.

1135 November 15, 1912, 9 A. M.

Court reconvened.

EDWARD PYKA, a witness for the plaintiff, recalled for further examination, testified as follows:

Cross-Examination by Mr. Chiperfield.

I am the farmer for the La Salle County Carbon Coal Company on their land at Cedar Point. I rent the farm
 1136 from them. I rented land on Section 21 from them.

I was subpoenaed to come here. I know a man named
 1137 McPhedron. Have talked with him. We associate together a great deal.

1138 Paid cash rent for part of my land and rent the balance
 1139 on shares. Lease only runs this year. I was first acquainted with the land in 1893. I traded cattle with
 1140 Waugh and took our stallions down there. In 1894 don't know whether I was there after August but know I was
 1141 there after October. In 1895 was there after August. Used to change sheep and cattle with them every year. For instance, take a ram we used one year and he would use it the next so as not to interbreed. Would make the
 1142 round trip in a day.

Corn grew better than it did on the prairie. There were many acres where the corn would go better than 100
 1143 bushels; some would go as high as 120. Did not see any as high as 130 or 140, but half of the land down there went 120 bushels per acre and half of it just a little lower. The half a little lower would average about 50 or 60 bushels,
 1144 some of it 40 bushels. The 40 bushel corn grew on high land. The difference in elevation between the high and low pieces was two or three feet. I think that an elevation of two feet in the field would make a difference between the yield of 120 bushels an acre and 40 bushels an acre.
 1145 It usually happened in order to make the corn grow faster the nearer it was to the water the better and the higher the land got the poorer the crop it raised. The water surface was never more than three feet below the lowest part of the land that I regarded as tillable.

1146 Have seen the land during the past week. The stage of water is comparatively a high stage. The water is not over the part where the corn is planted. The river now is at least three or four feet above low water conditions and still it is not over the place where the corn is planted.

1147 The place where the corn average 40 bushels was on the ground a couple of feet higher in the north end of Section 21 and along the south side of Section 21. The highest pieces constituted about one-third of the ground.

1148 Don't know that the highest pieces of ground would raise better crops and that there would not be a difference of 80 bushels in land 24 inches higher and land 24 inches
1149 lower. The grade of corn on the land raising 40 bushels was just the same as on the land raising 120 bushels, but the stalks and ears were not so large. The ears on the
1150 40 bushel corn would be about half as big as the ears on the 120 bushel corn.

1151 Q. Don't you know, as a matter of fact, that you never in all your life on that piece of land within the time you have mentioned from 1890 to 1900, saw any corn there that would go 100 bushels to the acre?

Objection by plaintiff; objection sustained. To which ruling of the court, the defendant by its counsel then and there duly excepted.

Q. Don't you know that your statement that corn on that land in any place would average 120 bushels to the acre is not correct? A. Yes, sir, there was corn went better than that.

Q. How much better did it go? A. 125 bushels.

I am sure about it as I was through the corn when they
1152 were picking it. I counted the rows, eight and a half rows to the acre, one ear to the stalk, the ears from 10 to 13 inches long, the corn planted three foot six apart and the rows three feet eight apart.

1153 I know that in that particular piece of ground the wild cucumber, man vine, morning glory, grew but don't know that the corn was pulled down by the weeds.

1154 I counted the rows and estimated the size of the corn just to see the difference between the bottom land and

the top land. As a result of that I did not come to the conclusion that bottom land where buildings could not be erected, fences could not be built, houses could not stand, were two or three times as valuable as the upland.

I was not on the land before 1890. Before 1900, started
1155 plowing in May or April. Don't know that the water was never off the land before May 15th. Knew about the character of the lands before 1900, the kind and character of property this was. Did not know that this property owned or claimed by the La Salle County Carbon Coal Company was a coal mining proposition.

1156 Q. Did you know that under the law of the State of Illinois that they would have a right to own no land of any kind except such as was necessary for the prosecution of their business?

Mr. O'CONNOR: I object.

A. I don't know anything about that.

Mr. O'CONNOR: Wait a minute. Your Honor, we object to the asking of that question as being highly improper.

The COURT: I sustain the objection.

1157 To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: I specifically except to the ruling of your Honor, and if you will allow me I want to be heard on the proposition without the presence of the jury.

The COURT: Well, I think I have heard that two or three times this week.

Mr. CHIPERFIELD: You haven't heard a word from me on that subject, have you?

The COURT: Well, I think I have heard it in a general way in the pleadings and all through the case. I don't think that I will let the jury retire to be heard on that.

Mr. CHIPERFIELD: I ask the record to show that I request of the court an opportunity to be heard——

The COURT: I overrule the request.

Mr. CHIPERFIELD: ——upon the ruling.

The COURT: I overrule the request.

Mr. CHIPERFIELD: I except.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Did you know that this property was connected with and used by the Carbon Coal Company as a coal mining proposition?

A. No, sir, I did not.

Q. Did you regard it entirely and exclusively as an agricultural proposition? A. I only considered the use of the land for farming purposes, took into consideration no other use. Did not consider that the property had any value for coal purposes and have left that entirely out of my calculations. Took into consideration what the rental value of the property would be prior to 1900. Did not know that the rental value of the property for ten years before 1900 was \$500 a year, for the tract, whatever it was, between four and five hundred acres.

1159 Q. If the rental value of this land was, for the entire tract, \$500 a year, upon that rental value of one dollar and some cents an acre, would you say that the value of this property for agricultural purposes was \$100 before 1900? A. Yes, sir.

1160 Don't know where Dennis Lynch's property on Section 33 is that M. W. Duncan bought in 1898.

1161 Q. Well, then, I want to ask you if you know whether or not that the east ten acres of the west one-half of the southwest quarter—I should have said Section 13, of Township 33 North, Range 1, east of the Fourth Principal Meridian, and also the east half of the east half of the

southeast quarter of Section 13, Township 33 North, Range 1, east of the Fourth Principal Meridian, consisting of 50 acres of land sold on the 7th day of June, 1898, at public sale to Mr. Nicholas W. Duncan for \$348.87.

Mr. BUTTERS: We object to that.

The COURT: How far is that from this land, in miles?

Mr. CHIPERFIELD: From the land involved in this suit it is perhaps within two and a half miles of this bottom.

1162 Objection sustained; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We offer to show by this witness, if your Honor please, that in the proceedings of William P. Leaghy, assignee of Dennis Lynch, on the 7th day of June, 1898, by authority of a decree of the County Court of La Salle County, Illinois, at the May Term, 1898, in the case of William P. Leaghy, assignee of Dennis Lynch, against Dennis Lynch and others, that there was sold at public auction to Nicholas W. Lynch the interest of Dennis Lynch in the East 10 acres of the West $\frac{1}{2}$ of the Southeast Quarter of Section 13, Township 33 North, Range 1, East of the Fourth Principal Meridian; also the East half of the East half of the Southeast Quarter of Section 13, Township 33 North, Range 1, East of the Fourth Principal Meridian, for \$348.87, and that land is land that is similarly located and within two and one-half miles of the land in Section 21, and adjoining the land in controversy in this suit, in Section 24, and adjoining the

1163 land described in the plaintiff's declaration in Section 14, and within three-quarters of a mile East and a mile North of the land described in the plaintiff's declaration in Section 15, the South line of the premises concerning which the offer is made being the North line of Section 24 and of Section 23 and of Section 22 and of Section 21?

1164 Objection by plaintiff; objection sustained; to which

ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Now, then, your Honor, I have a number of other offers I want to make in connection with the cross-examination of this witness.

Mr. O'CONOR: They ought to be made, Mr. Chiperfield, out of the presence of the jury.

Mr. CHIPERFIELD: I don't care how they are made. I simply want to make them, that is all.

1165 (The jury leaves the jury box.)

Mr. CHIPERFIELD: I want, if your Honor please, to interrogate this witness and to ascertain his knowledge, and if possible, to prove and show by this witness that on the 9th day of February, 1899, that Michael Cummings and wife, Bridget, conveyed the West 45 feet of Lot 3, in Block 91; the South 100 feet of Lot 14, Block 95, La Salle. Also, beginning at a point on the public highway 34.41 chains west of the Northeast corner of Section 22, Township 33 North, Range 1 East, running thence South of the center of said road four degrees and fifteen minutes East, 28.32 chains to a stone for a corner in the East line of the right of way of the public road; then South four degrees and fifteen minutes East, 11.68 chains to the half section line; thence East 31.25 chains to the Illinois River; 1166 thence up the river 31 degrees and 15 minutes East, 14.83 chains to a stone at Duncan's corner; thence West 30 chains to the beginning; the deed was acknowledged before T. F. Doyle, notary public of La Salle County, Illinois; and that the value of the premises in La Salle was at least \$1,750; that this land adjoins the land in question in this suit and is similar land.

I also want to show that upon the 26th day of June, 1894, in connection with the cross-examination of this witness, if possible, that John Stewart, widower, con-

veyed to Edward Henry Cummings all that portion of the North 30.25 acres in the Northeast corner of Section 22, Township 33 North, Range 1, East, which lies East of the road known as Shippingsport Road, and South of the right of way of the I. V. & N. Railroad, and North of the 57-acre tract formerly owned by N. Duncan, for a consideration of \$490; acknowledged before T. N. Haskins, notary public; and that this land adjoins the land in question.

I want to show by this witness in connection with its cross-examination, if possible, that on the 12th day of March, 1894, for the sum of \$450, the Utica Hydraulic Cement Company conveyed to the La Salle County Carbon Coal Company the coal under the Northeast Quarter of Section 23, North of the Illinois River, in Township 33 North, Range 1, for the sum of \$450; acknowledged before J. B. Condif, notary public, La Salle County, Illinois.

I also want to show that on the 16th day of January, 1893, Jane R. Hubbard, widow, and sole executrix of Henry Hubbard, deceased, conveyed to the La Salle County Carbon Coal Company for the consideration of \$788.50 all the coal and other mineral—

The COURT: Don't you think we had better dispose of these one at a time? There will be so many that I won't recollect.

Mr. CHIPERFIELD: I will be glad to conform to whatever the court's idea is.

The COURT: How many more have you?

Mr. CHIPERFIELD: I think there are perhaps three or four more.

The COURT: I can't recollect the dates or the names of all of them. You may go ahead.

Mr. CHIPERFIELD: I will do any way you say. I want

to conform to the court's ideas in any way just as far as
1168 I can consistently with the rights I represent.

Objection to first offer overruled.

1169 The COURT: What is the next one?

Mr. CHIPERFIELD: John Stewart to Edward Henry Cummings, conveying "certain premises in Section 22, Township 33 North, Range 1, East, on June 26, 1894, for \$490."

1170 The COURT: How far is that from this land?

Mr. CHIPERFIELD: It adjoins it.

Mr. BUTTERS: Object to it on account of being too remote in time.

The COURT: 1894? "I think I will overrule the objection. Read your next one.

Mr. CHIPERFIELD: The next one was the Utica Hydraulic Cement Company to the La Salle County Carbon Coal Company, conveying the coal under the Northeast Quarter of Section 23, North of the Illinois River, in Township 33, North of Range 1, for the sum of \$450.

The COURT: I recollect that. What do you say about that? Do you object?

Mr. BUTTERS: We do object, your Honor.

The COURT: I sustain the objection.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: The next one is Jane Hubbard to the La Salle County Carbon Coal Company, the 16th day of January, 1893, conveying and confirming all the
1171 coal and other minerals underlying the following fraction: North of the Northeast Quarter South of the Illinois River containing 30.85 acres, more or less. Also, the South fractional one-half South of the—

The COURT: That is the coal?

Mr. CHIPERFIELD: Yes.

Mr. BUTTERS: Object to it.

The COURT: Sustain the objection.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: The next one is Michael Brannan to Ann Brannan, conveying and warranting the West ten acres of parallel width North and South of the East 36.65 acres, of parallel width North and South of the East one-half of the Northwest Quarter of Section 24, excepting and reserving the coal, for \$220, February 1, 1896. On Section 24, adjoining part of the land involved in this proceeding.

1172 Objected to; objection overruled.

(The jury returns to the jury box.)

(Cross-examination of witness resumed.)

I do not know of the sale and conveyance referred to by you including lands in Block 91, La Salle, and a part of Section 22, Township 33, North, Range 1, neither do I know of the sale made by John Stewart in January, 1174 1894, to Edward Henry Cummins. If any sales of that kind were made in the vicinity of land similarly situated to those, that would not effect my idea of the market value of those lands. I have not taken or attempted to take into consideration any sales of any kind, but have fixed my own idea of the value of this land as a corn proposition, and have not taken into consideration its use for any other purpose. If the land will not raise 1175 corn, but will raise other valuable annual products it does have a value. Don't think it would raise millet, it is too rich. Did not hear of any millet being raised across the river within a period of six weeks which was not 1176 planted before August 1st. Millet could be planted on there and it would grow and the only risk I think would be the risk of going down. I think vegetables would grow 1177 on the land; it would be a splendid vegetable garden. Sweet corn, peas, beans, sugar beets, turnips, and all

vegetable crops requiring a short period to mature would grow on this land, although I don't think they would grow there as well since 1900, as before. Think it would
1178 be too wet.

I think in 1907, after the 15th of July, you could not plow in there; 1907 was a very wet year with high water practically all the year. It rained very heavy during
1179 the times we were putting in the crops. It was a very wet cropping season.

Take the years when the water did not go down until the 20th of June and where you get in a crop by the 15th of July, none of the things you mentioned would grow upon that land. If they would grow it would give this
1180 land a little value. The land that could be plowed, I think, would be worth \$30.

When my attention is called to the raising of these ad-
1181 ditional things, it does not change my idea as to the value of the premises as expressed yesterday when I stated that as a corn growing proposition the land would be worth \$30. The greatest amount of corn I ever saw
1182 growing on Section 21 was from 250 to 275 acres. In 1183 1897, think about 300 acres. It was all in corn except patches in timber. Farmed land in 1905 and 1906. In
1184 1906, I was so favorably impressed with the land that 1185 I rented 120 acres instead of the amount I had the previous year, wanted more than I had in 1905 and 1906. In 1900, there was a splendid full crop of corn raised on
1186 this land, and in 1901, there was a splendid crop of corn. In 1902, there was a great flood, nothing was raised anywhere on the bottoms. Did not notice the water much in 1901, it was a dry year. I could not see much difference
1187 in the low water between 1890 and the present time. Before 1900, the very lowest I ever saw the river below the top of the bank next to Section 21 was four or five

1188 feet. Now it is right up to the top. In low water in the summers now the water is within a foot and a half of the top. Don't say that there is not a space between the top of the bank now and the low water we have had in the summer since 1900. Have not been down to the river for the purpose of making any observation during the low water.

1189 Last summer I ran a launch on the river. Did not keep track of it in any month. Know that it has been raining since August and that the river has been raising. Have not observed a three-foot rise in the last 30 days,

1190 could not say whether it has or not. Don't know anything about the Fox River. Would say the Illinois River in the last 30 days has raised a foot and a half to two feet; would say two feet.

1191 When I placed the value of this land at nothing, since 1900, where I did not get a corn crop, I did not take into consideration whether or not this land had underlying it a high grade merchantable coal. If it is underlaid with a high grade merchantable coal I would think the value would be greater than I have stated.

Q. Do you think if it was underlaid with a high grade merchantable coal, two veins, containing from 3,500 to 5,000 tons per acre, that the value of this land would have been \$100 an acre in 1900? A. Yes, sir, I think it would be worth a great deal more.

Re-direct Examination by Mr. Butters.

Q. Mr. Pyka, assuming that there was coal under this land, as Mr. Chipperfield has implied in his question, that coal being there on January 17, 1900, and assuming the
1192 land was worth a certain price prior to January 17, 1900, would it be worth any different price on January 18th, after the water was turned in?

Objected to by defendant; objection overruled; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. Couldn't you make that any plainer?

Q. Yes, I think I can. If there was coal in this land and there is now coal under this land, would it be any different in price, would there be any difference in the price of the land on the 17th of January, 1900, and the 18th of January, 1900; that is, before and after the turning in of the water of the Sanitary District of Chicago?

A. That is, the price of the coal?

Q. Yes. The land in relation to the coal; do you understand? Would there be any difference in the effect—

1193 The COURT: Did the turning in of the water of the Sanitary District change the value of the coal?

Mr. BUTTERS: That is it.

A. No, I don't think it did.

1194 Mr. BUTTERS: I want to read the deposition of Homer R. Clark.

HOMER R. CLARK, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Donnell.

Name Homer R. Clark, resided in Lockport 38 years. Real estate agent. Reside east of the Desplaines River at the present time, although formerly lived west of the river in Will County. Born on the Barrett B. Clark
1195 farm and lived there 21 years. Desplaines River was
1196 four miles distant; Lemont six miles and Lockport eight miles. The market place for father's farm was Lockport; necessary to cross the river going to market. I lived on the farm until 1867 and since 1867 in Lockport

within half a mile of the river. I saw the Desplaines River frequently during these years.

- 1197 Between 1870 and the time of the Sanitary District construction during the period of dry weather, the Desplaines River north of Main street in Lockport was often nearly dry at a point near the bridge at Lockport. At Romeo and Lockport I have observed it. At Lemont it
- 1198 was very nearly dry where the bridge crosses the river. I have walked across the river at Lockport, not at other places. I have seen the time I could walk across there without getting my feet wet, occasionally driven across there.
- 1199 Observed same places in the river during times of high water. High water generally in the spring, May and June. The land adjacent was used for pasture and have
- 1200 known of grass being cut off of a portion of it. I know where the bridge over the Sanitary District Channel at 9th street is, have been over it frequently. I have seen
- 1201 that water at said place, both high and low. I don't
- 1202 know the exact width of the channel at that place. I have seen it filled with water from the end of the abutment to the other end of the bridge during the past five years. During the past five years I have seen it very
- 1203 low and very high. I knew the natural channel, there were quite deep places in the channel. Prior to the Sanitary District work it was rather shallow around near Lemont, but there were deep places between Lockport and Lemont.

Cross-Examination.

Would scarcely get my feet wet on account of running or standing water when crossing the Desplaines River.

1204 Deposition of F. G. BLAKESLEE, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Donnell.

My name is F. G. Blakeslee, I live at Lockport, since
1205 1897. Am operator at the controlling works of the Sanitary District and have been so engaged for four years. I work eight hours, from seven o'clock until three daily. My duties are to take care of the machinery in connection with the controlling works, the reading of gauges, transmitting of records to the office, making of
1206 records, and so forth. Other employes, whose duties are similar to mine; houses and buildings around the controlling works. The gauge that I refer to shows the
1207 elevation of the water in the main channel based on Chicago City datum. The gauge directly on the Bear Trap dam shows the amount of water in feet and inches or feet and tenths, going over the dam. I read that every half-hour and make a minute of the readings and the record is sent to the Sanitary District office in Chicago daily.

There are seven gates in the Bear Trap dam. Can
1208 determine the amount of water passing over the dam by measurments taken by the engineers; also when the gates are opened, the amount of water going through the gates; also when the dam is raised so as to admit no water and the gates are opened.

1209 During the four years I have been there the amount of water has varied at different times. The quantity of water to be let out is determined by the engineer or president of the Sanitary District. Orders are transmitted to me by telephone. Between the 15th of September, 1904, and the present time, I could not state how much water daily was passing out of the basin. I was

last on duty in reading the gauge this morning; was
 1210 there about two hours and a half. There was 3.9 feet
 of water on the crest of the dam, which, according to
 1211 computations by the engineers would indicate a flow of
 250,000 cubic feet of water per minute.

1212 Before January 17, 1900, there was no water passing
 over the Bear Trap dam, it was not opened. I think
 1213 during the past year the highest water passing over the
 Bear Trap dam was 4.5 feet. That would indicate about
 1214 320,000 cubic feet of water per minute. The amount of
 water that can be let over the Bear Trap dam when the
 dam is lowered depends upon the elevation of water in
 the main channel. As the water stood at nine o'clock
 this morning when I was on duty, if the gates were low-
 ered as low as could be, I think it would be possible to let
 over about seven feet of water. It would, of course, well
 1215 for instance, for the first few minutes, after that it
 would materially lower the water in the basin which
 would decrease the amount of water going over the dam.

I was on duty a portion of the month of March, 1905.
 1216. I cannot tell how many cubic feet per minute seven
 feet of water going over the crest of the dam would be
 without looking at the table. I have a copy of it in my
 1217 pocket. I have not any table which would show seven
 1218 feet of water over the dam. I cannot tell how many
 cubic feet of water is indicated by the discharge of one-
 tenth feet of water over the crest of the dam without
 looking at the table. One-tenth of a foot, 1,000 cubic
 1219 feet. The table was furnished to me by the assistant
 1220 engineer of the Sanitary District, Mr. Cooley, to whom
 I daily transmit the records in cubic feet and tenths, of
 the flow.

1221 I was present when the water was turned into the chan-
 nel over the Bear Trap dam on January 17, 1900. The

act of turning the water in was performed by E. L.
 1222 Cooley. I cannot tell what difference there has been
 in the quantity of the water that they allowed to pass
 over this dam in the summer and winter; there may not
 have been any so far as I know.

1223 I cannot tell the greatest quantity of water from my
 recollection which I have seen flowing over the dam at
 any time during my service. I cannot tell the greatest
 number of feet of water I have seen going over the dam.

1224 I have seen the dam down flat but at the same time
 there was low water in the channel which would not
 make any excessive flow. I cannot tell how long it re-

1225 mained flat. I think we have had the dam down at
 times pretty near as far as it would go for two days; it
 might have been during flood time, or it might have been

1226 at other times.

Usually put in eight hours out of the twenty-four at
 1227 the controlling works each day. Since I have been em-
 ployed at the controlling works water has been passing
 over the dam most all the time. I do not know of any
 time that there has not been water going over the dam
 or through the gates except at times when we would have
 to raise the dam for repairs, taking half an hour or more,
 some short period. It has been in constant operation. I

1228 don't remember any date when it was necessary or
 when we did allow a greater quantity than usual to pass
 out of the basin during times of high water or rain peri-
 ods in the Desplaines Valley. I do remember the icr-

1229 cumstance on one occasion but don't know the purpose.

The table I used to-day was one furnished me by the
 engineers. It is used by me in making up my records
 1230-31 and reports. I haven't the table. I believe it is
 1232 printed. The table was given back to me before my re-
 fusal to let you see it.

1233 The Sanitary District channel from the controlling works to the 9th street bridge varies in width from three
1234 to six hundred feet. Aside from the water flowing from the dam and through the gates the only water which escapes from the windage basin is water that goes through two water wheels which we have for developing power for heating and lighting the buildings and grounds. There is a raceway east of the channel leading south from the controlling works. The water in the raceway operates the lighting plant.

1235 The mechanism that controls the dam and gates is operated by different power; the dam by hydraulic power, the gates by hand power. There are seven gates. North of these there are places for eight more. I don't know whether there is any controlling works to regulate the flow of the water between Lake Michigan and the Bear Trap dam.

1236 The cause of the water being lower at one time than another in the windage basin and channel is due largely to the prevailing winds. A north wind will raise the water in the windage basin, while a south wind has a tendency to drive it back. The windage basin is 505 feet wide at its south end and it narrows to a 160-foot channel, which width is maintained during the Rock channel, throughout the length of the rock channel. The

1237 windage basin is 35.2 feet deep.

I desire to offer the table enclosed in the envelope in conformity with the offer and suggestion of the counsel for defendant, and make the same a part of my evidence. I will not give you the table.

Certificate of commissioner taking depositions to depo-
1238-40 sitions of Clarence O. Davis, Obediah Hicks, Rollin L. Reed, T. E. March, Thomas J. Kelly, Homer R. Clark and F. G. Blakeslee.

- 1241 Mr. BUTTERS: We offer now in evidence the deposition of Zina R. Carter, taken March 23, 1906, together with the stipulations and certificate of the commissioner attached, which reads as follows:

Stipulation as to the taking of depositions of Zina R. Carter, E. L. Cooley, William A. Vail, Isham Randolph and William H. Christie, before Mary E. Black, Commissioner, on April 25th and 26th, 1905, entitled in the suit of John Brannan vs. The Sanitary District of Chicago. Signed by the attorneys for the respective parties, plaintiff and defendant.

- 1242-49 Stipulation relative to the taking of depositions, entitled in the case of John A. Shulte vs. The Sanitary District of Chicago, pending in the Circuit Court of Mason County to the August term, A. D. 1905.

And other cases pending in all counties in the Illinois River Valley in which suits are pending against the Sanitary District of Chicago, except Grundy County, defining the manner in which the said depositions shall be taken and providing for their use as evidence under certain conditions upon the trial of various causes therein mentioned and specified.

- 1254 Certificate of Mary E. Black, Commissioner, to the taking of said depositions.

- 1255-57 Additional stipulation entitled in the same case of Shulte vs. The Sanitary District of Chicago, relating to the taking and preservation and use of said deposition.

1258 Deposition of ZINA R. CARTER, a witness for the plaintiff,
being sworn, testifies as follows:

Direct Examination by Mr. Curran.

My name is Zina R. Carter, age 58, and have resided
in Chicago for 33 years. Am trustee of the Sanitary Dis-
trict of Chicago, elected 1895 and have been President of
1259 the Board of Trustees for something more than a year.

The Sanitary District has constructed a channel con-
necting the Chicago River with the Desplaines River. In
the state of nature the Chicago River flowed into Lake
Michigan. The channel of the defendant empties into
the Desplaines River near Lockport, in Will County. The
Desplaines River empties into the Illinois. By the junc-
tion of the Kankakee it forms the Illinois River.

1260 The channel excavated by the defendant is 28 to 29
miles long and extends through clay, rock and glacial
1261 drift. The portion of the channel constructed through
rock is 162 feet wide and 26 feet below Chicago datum.
The width of the clay channel varies. I cannot state
1262 the width. It is wider and larger than the balance. The
slope is two to one I believe. I think the greatest width
at the top of the earth embankment would be a little
in excess of 300 feet. Other work, cross section of the
Chicago River, has been enlarged, and the work per-
formed necessary to carry the water through the city
1263 of Joliet. The average width of the widening of the
1264 cross section of the Chicago River cannot be stated on
account of the irregular size originally of the Chicago
River. As far as the work has been performed the cross
section is 200 feet in width. Before it was widened the
Chicago River was very irregular. It is not complete, only
1265 about two-thirds of the distance between Lake street
and the junction of the Sanitary channel with the Chi-

- 1266 cago River at Robey street. There is a distance of about
two and a half miles completed to the present time. The
1267 river has been deepened about eight feet. About one-
third of the distance of the work yet remains to be done.
- 1268 At Joliet the cross section of the Desplaines River was
increased through the city of Joliet, and change was
made in the same and the dams that existed were re-
1269 moved. That work was completed in about January,
1900. The cross section I think was increased for the
entire length through the city. Unable to say how much
it was increased in width or how much deepened.
- 1270 Dams number two, and Adams Dam sometimes called
Dam number one, were removed, and Dam number one
was reconstructed. I do not recall any other construction
through the city of Joliet.
- 1271 I think there were walls on one side at least construct-
ed along the river, perhaps on both sides. On the side
adjoining the I. & M. canal, a construction was performed
to protect that waterway, covering a distance between
Dam number one and Jefferson street. There was a
wall constructed of concrete. The levees were constructed
by the defendant at certain points between the Bear Trap
Dam and that part of the Desplaines River known as the
Upper Basin in Joliet, not, however, for the whole dis-
1272 tance. I cannot give the length of the levee.

I have seen the Desplaines River at Lyons. Near Lyons
a construction was made, what is known as the spillway,
which was to prevent water flowing through an old ditch
dug there in years past. Am unable to state how long
1273 it was in feet. I think the work is concrete although
the base may have been of stone. The work is located
near the Desplaines River and was completed by the de-
1274 fendant in 1893. It was built across the Ogden Ditch.
The Ogden Ditch carried water from the Desplaines River

to the Chicago River and the south branch of the Chicago, a distance of seven miles.

After the construction of the spillway any water that
 1275 was stopped from flowing through the Ogden Ditch
 flowed down the Desplaines River into the Illinois River.
 Am unable to say how high the spillway was constructed
 across the Ogden Ditch. I haven't any actual knowledge.
 1276 The object was to prevent overflow in the Desplaines
 River passing through the Ogden Ditch into the Chicago
 River.

1277 At Dam number two, in the city of Joliet the bridges
 1278 were changed. Entirely different type of bridges were
 built. A stone bridge was constructed with piers of stone
 construction. The piers were changed at Jefferson street
 1279 over the Desplaines after the removal of the stone
 bridges, there was a steel bridge placed there. It was a
 1280 little longer than the bridge previously located at said
 point. I have no independent recollection of the length
 of the new bridge the defendant built at Cass street.
 1281 I think the bridge was placed at a different grade, that
 the elevation is greater than the old bridge. How much I
 1282 am unable to state. The elevation was slight, I cannot
 state the exact amount.

The connection between the channel I have described
 constructed by the defendant and the Chicago River is at
 Robey street. It was simply an opening in the clay.
 There are no controlling works located at Robey street;
 the controlling works are at Lockport.

1283 The channel constructed by the defendant at Lockport
 meets the Desplaines River. The controlling works at
 Lockport consists of a construction that absolutely con-
 trols the flow of water, which is called the Bear Trap
 Dam. The dam may be raised or lowered and thereby
 increase or diminish the flow of the water. There are

seven complete gates and seven gates yet to be installed
 1284 if I recall correctly. The construction at that point was
 made with a view to installing these gates if necessary,
 seven additional gates.

1285 The construction I have described was for the purpose
 of carrying sewage and water from the Chicago River
 through the Desplaines and Illinois into the Mississippi
 River. It is permanent in its character. The works I
 have described were completed in 1899. They are under
 1286 the control of the defendant, controlled by its engineer-
 ing department. Isham Randolph is the head of the
 1287 department, controlled by the entire board and engineer.
 The construction, management, direction and use of this
 work has for a period of five years since January 17,
 1900, been under the control of the trustees of the de-
 1288 fendant. Also the same control since January 17, 1905.

1289 The water from the Chicago River and Lake Michigan
 was permitted to run into the channel I have described
 at Robey street on January 2nd, 1900. On that day the
 Bear Trap Dam and the gates I have mentioned were
 closed and the dam was raised, which condition contin-
 ued until the 17th of January, 1900. When the connec-
 1290 nection at Robey street was made, the water flowed into
 the channel from the Chicago River towards the Des-
 plaines. It flowed until the channel was filled to the level
 of the Chicago River. Through the Chicago River the
 flow was from Lake Michigan to Robey street. Before
 1291 that time a large part of the flow went through the I. &
 M. canal. In a state of nature it flowed towards Lake
 1292 Michigan. The Chicago River did flow toward the I.
 & M. canal and flowed up to where its pumps were located.
 I could not answer correctly how much water had been
 pumped into the I. & M. canal.

1293 It took the canal between Robey street and Lockport

about six days to fill. I was present at the controlling
 1294 works on January 17, 1900. The board of trustees were
 also present, also three commissioners of the state of
 1295 Illinois. On that date the dam at the controlling works
 at Lockport was lowered by permission of the Govern-
 ment of the State of Illinois. It was lowered early in
 1296 the morning, I don't recollect the hour. When it was
 lowered the water flowed over the dam from the channel
 into the Desplaines River and down the river. I don't
 know how much water was allowed to flow.

Since that time, up to January 19, 1905, I have been
 there many times but not at regular intervals. On the
 1297 occasions I have been there the water was flowing over
 1298 the dam. To my knowledge the gates that I have men-
 tioned, between the 17th of January, 1900, and the 17th
 of January, 1905, during a very large part of the time
 1299 have been closed. I am unable to answer accurately
 as to what part. My judgment on that subject is that the
 gates have not been open at any time except for experi-
 ment to ascertain the actual flow, or for temporary ad-
 justment of the dam. When the gates have been open
 the water was flowing through the rates rather than over
 1300 the dam. I am unable to say how many have been open
 at any one time. The gates have been open at various
 times during those five years. I haven't any knowledge
 as to the capacity of the flow of the dam and gates on
 those occasions. I know the water did flow over the
 1301 dam and through the gates.

1302 Recess until 1:30 P. M.

1303 Court met pursuant to recess.

Mr. Butters continuing reading the deposition of Zina
 R. Carter.

There has never been a time during those five years

when I have been present at the works that water has not been flowing over the dam or through the gates. The controlling works are in charge of the engineering department. Mr. Randolph is in charge of that department.

1304-5 I know Mr. Cooley. He is an engineer and employee
1306 of the Sanitary District. His duties are largely connected with this office and his office is in this building.

1307 There have, since January, 1900, been six men in actual
charge of the controlling works. The foreman's name is Blakeslee. Their duties are to carry out the orders of
1308 the chief engineer. I am not aware that they receive orders from the chief engineer. I cannot answer as to
whom Mr. Randolph issues his orders. I think Mr. Randolph issues an order direct to any man in the department at Lockport. The engineering department comprises all the construction work of the Sanitary District and all surveying of every character is conducted by that department in obtaining data for the purpose of the Sanitary District.

1312 There is a vast amount of investigation by means of surveying necessary to establish routes, find good elevations, of given territory that we may desire to have knowledge of, as for instance they have been working
1313 on the Calumet route. By the Calumet route I mean a line of territory between Willow Springs and the Calumet River. The survey of the Calumet route was for the purpose of ascertaining the condition of that territory with the expectation that a channel may be cut
1315 through that point some time from a point known as Sag, a point of the present Sanitary Channel to the Calumet River. The Calumet River flows into Lake Michigan. When the proposed channel is cut it will empty into the present Sanitary District channel. It will increase the

1317 drainage area of the Sanitary District. I am unable
 1318 to state how much in square miles. The channel will
 1319 be about 17 miles long. It is not determined how wide
 1320 it will be. It is not contemplated to send down the flow
 1321 of water, that is the surface water of the Calumet, but
 the sewage for that section of the territory and sufficient
 water for dilution.

1322 Relative to the present territory that is drained, it is
 immediately south and consists of a part of the City of
 Chicago, a large part which is now sparsely settled,
 speaking from a standpoint of a city. The remainder
 1323 of the territory has a larger population. There will be
 1324 no increase in the capacity of the stone work in order
 to make the connection by the Calumet route.

Mr. CHIPERFIELD: I want to now move to strike out
 all of the evidence contained in this deposition with ref-
 erence to the Calumet extension, for the reason that the
 same is merely a projected enterprise, that it has not
 been constructed to this date, and that the testimony
 relative thereto does not tend to prove any of the issues
 in this case, and is purely theoretical upon the part of
 the plaintiff.

The COURT: I think I will overrule the objection.

To which ruling of the court, the defendant by its
 counsel, then and there duly excepted.

1325 Since the 17th day of January, 1900, the controlling
 1326 works has been under the chief engineer. Since the
 17th day of January, 1900, and during the last year, a
 report was made direct to the president of the board
 showing the flow during the period covered by the report
 somewhat in excess of 250,000 cubic feet per minute.

Mr. CHIPERFIELD: We move to strike the answer as
 not being responsive to the question.

1327 Same objection to the question: Objection overruled:
 To which ruling of the court, the defendant by its
 counsel, then and there duly excepted.

1328 My recollection is that the report was handed to me
 1329 by Mr. Cooley. No one has charge of the flow through
 the controlling works except the chief engineer.

1330 My knowledge as to what officers or agents have, under
 the direction of the board, taken gauge readings and
 made reports is general and not specific. As a matter
 of supposition Mr. Cooley has more to do with that than
 any man in the engineering department. Mr. Cooley has
 1331 occupied that same position in the engineering depart-
 ment during the last five years.

I do not know how often the flow through the controll-
 ing works is read and reported. My idea is there is no
 reading except on occasion of a change of the gates. I
 1332 think Mr. Cooley has more general knowledge of the
 actual flow than any other man connected with the dis-
 trict. When a change is made in the quantity of flow
 from the Bear Trap Dam, it is directed by the chief engi-
 neer. I think it is only on a very rare occasion that he
 1333 has ever had any direction from an officer of this board.
 There have been a small number of instances where I
 1334 have advised with the chief engineer, regarding the flow
 of water over the dam. They have occurred when there
 was difficulty in navigating the Chicago River by reason
 of low water. I could not give the date of it. My answer
 1335 refers to the last year and a half.

The Sanitary District of Chicago has a clerk that keeps
 the records of its proceedings as a corporate body. The
 clerk is Stephen D. Griffin. The Sanitary District does
 not make a record of its flow of water over the Bear Trap
 Dam and through the controlling works, to my knowl-
 1336 edge; no record kept unless it is in the engineering de-

partment. I have never seen any such record. It would
 1337 be under the direction of the chief engineer. I personally have no knowledge of it or how often a report is made to the chief office of the defendant in the engineering department.

1338 Between Summit and the controlling works at Lockport in the process of its work to the Desplaines River, it changed the course of the river there. I was not connected with the Sanitary District at the time that work
 1339 was performed. I never saw the river in its original state, in its old bed; therefore I could not give an intelligent answer to the question.

The waters of the Desplaines River flow towards Lockport from the spillway near Lyons or Summit. From the spillway or the Santa Fe bridge near the spillway to a point opposite the Bear Trap Dam, the waters of the Desplaines River flow since the 17th of January, 1900,
 1340 in an artificial channel from Joliet. Cannot state the depth of the channel. All of the works and embankments that I have referred to between the lake and the end of the embankment at Joliet, constitute together what is known as the Sanitary District work.

The paper shown me as Plaintiff's Exhibit "7" has my signature attached hereto. It was served on me Monday of this week. I don't remember the name of the gentlemen who served it.

1341 *Cross-Examination by Mr. Chipperfield.*

I said in answer to the question that the purpose of the construction of the Sanitary District channel was to convey the sewage of the City of Chicago into the Desplaines River. That is not the only purpose of the construction of the Sanitary District. That is the primary purpose. A further purpose is that the channel was very

largely increased in size for the purpose of making it a navigable channel, a ship canal. The design of conveying the sewage into the Desplaines River was to prevent the flow of the sewage into Lake Michigan because the
 1342 waters there were used for drinking by the people of Chicago.

There was a further purpose in the prevention in the spread of disease produced by an impure supply of drinking water.

I think there has been expended in the construction of this improvement a little over \$38,000,000.

1343 It is true and correct that the control of the dam is under the direction of the chief engineer, except on the occasion that some trustee or officer of this board, other than the chief engineer, may have directed a temporary raising of the Bear Trap Dam. The Chicago River is under the control of the federal government. It is not true that the Sanitary District is in charge of all the works from Lake Michigan to the Desplaines River. The
 1344 federal government has at no time ceased to assert and assume the regulation or to direct the amount of flow through the Sanitary District channel of the waters of the Chicago River. At all times since the opening of the
 1345 Sanitary District channel there has been supervision, regulation and control of the trustees of the Sanitary District by the federal government through the secretary of war.

1346 It is not true that water has at all times flowed through the gates in the controlling works at Lockport. There are two methods of letting the water out of the channel into the Desplaines River, one over the Bear Trap Dam and the other under the gates when raised. There is no necessity for putting water through the gates at any time when the Bear Trap Dam is down or is in use, be-

cause it may be put down sufficient for all purposes. When the Bear Trap Dam is lowered to its full capacity so that
 1347 the flow is at its maximum, the flow would be greater than the secretary of war's permit allows.

1348 *Re-direct Examination.*

(Read by Mr. O'Connor.)

There has been expended by the defendant in developing water power \$500,000. That hasn't anything to do with the health of the citizens of the defendant district.

The restrictions mentioned exercised by the government are active at all times; under the permit of the
 1349 secretary of war, the Sanitary District has no right to turn in water in excess of 300,000 cubic feet per minute.

1350 Navigation on the Chicago River usually closes in December, usually opens at any time from the first of April to the 15th of May. The restriction of the war department applies to the defendant corporation when navigation is closed. The permits are in writing. I have seen
 1351 them. I am quite willing the permits should be examined by the attorneys and copies made. I am quite willing to furnish any documents I am advised to by the Sanitary District Attorney.

My understanding of the order of the Secretary of War is that it fixes the maximum flow. The original permit granted the right to flow 300,000 cubic feet of water
 1352 through the Chicago River; afterwards an additional restriction was issued by the Secretary of War reducing the flow to 250,000 cubic feet per minute. The original permit covered the whole year. The restriction, I am not
 1353 clear, just what the language is now. I would not like to say.

The depositions are being taken in the Sanitary Dis-

trict office in the City of Chicago. The orders of the Secretary of War to which I refer, are in the Sanitary District office, in the same building on the same floor, about 60 feet distant. They are in a vault controlled by the clerk of the district.

1355 I am quite willing to have those papers produced here if the attorneys for the District so advise. If I do not produce them my refusal so to do will be caused by the advice of the attorneys.

The purpose of the widening of the Chicago River and 1356 increasing the cross section of the Chicago River is to provide a cross section that will permit the flow of 300,000 cubic feet of water through it without interfering with navigation.

Deposition signed and subscribed to before the Commissioner.

Mr. CHIPERFIELD: Now, following is the permit of the Secretary of War, which they have been calling for, which is as follows:

Whereas, under date of May 8, 1899, the Secretary of War granted permission unto the Sanitary District of Chicago to open the artificial channel from Robey street, Chicago, to Lockport, and caused the waters of Chicago River to flow into the same, upon the following conditions *inter alia*:

Two: That if, at any time, it becomes apparent that the current created by such drainage works in the south and main branches of the Chicago River, are unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its south branch;

And whereas, the Secretary of War subsequently di-

rected said Sanitary District of Chicago to regulate the discharge of water into the Chicago Drainage Canal so that the maximum flow through the Chicago River shall not exceed 200,000 cubic feet per minute, from midnight to 4 P. M., nor 300,000 cubic feet per minute, from 4 P. M. to midnight;

And whereas, said Sanitary District of Chicago has applied to the Secretary of War for permission to increase the flow between midnight and 4 P. M. daily to 250,000 cubic feet per minute, and the chief of engineers has recommended that the increase applied for be granted, but that the rate of flow from 4 P. M. to midnight be reduced to 250,000 cubic feet per minute, so that the flow through the Chicago River shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day;

Now, therefore, this is to certify that in accordance with the recommendations of the chief of engineers the Secretary of War hereby gives unto said Sanitary District of Chicago permission to regulate said discharge so that the maximum flow through the Chicago River shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day, upon the following conditions:

1358 1. That this permission shall be in lieu of the present authorized rates of flow as stated above.

2. That the permission herein given shall be subject to such modification as in the opinion of the Secretary of War the public interests may from time to time require.

3. That said Sanitary District of Chicago shall be responsible for all damages inflicted upon navigation interests by reason of the increase in flow herein authorized.

Witness my hand this 5th day of December, 1901.

(Signed) WM. CARY SANGER,
Assistant Secretary of War.

1359 ROBERT UNZICKER, a witness for the plaintiff,
sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Robert Unzicker, 64 years old; reside in Peru; engaged in the drain tile business and have lived 1360 there 30 years. Formerly a brick manufacturer.

I know Water street in Peru. Was one time a grain buyer; elevator was located on Water street. I ran it 1361 about six years.

I knew Sam Waugh and know the land lying south of Peru; have been over the land a couple of times. Sam Waugh farmed the land between 1890 and 1900. I bought 1362 corn of him. Was in the grain business in Peru in '93 1363 and '95. Could look over the lands from my place of business in Peru from the elevator. The land was used 1364 for raising corn. I am referring to land in Section 21. Pretty near all of it was in corn. During those years I was not out on the land. I was there afterwards in 1365 1900, 1901 and 1902.

I learned that the Sanitary District water was coming into the valley in 1900. I have ben familiar with the Illi- 1366 nois River since 1900. Do not go on to the river much, but go down to the bridge to watch the river. I have noticed the difference in the water since 1902.

Q. Now, just describe to the jury in your own way what conditions you have noticed?

Mr. CHIPERFIELD: I want, in order to preserve the question, to object to anything that has happened subsequent to five years from the 17th of January, 1900.

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Why, I noticed that the water, after the water came in from the Drainage Canal it was a great deal higher. We did not notice it so much the first year, but the second and third year it got so we thought it was from three to four feet higher than it used to be.

1367 It goes out quicker over the bottom lands than before. Of course the water is so much higher all the time than before after a rain. They don't raise so much corn as they used to.

Q. Take it in the year 1900 in the month of January, 1368 prior to the turning in of the water by the Sanitary District, have you an opinion as to what the fair cash market value of this land located in Section 21 was? A. Well, I have an idea it was worth about \$100 an acre then.

Motion to strike the answer; motion sustained.

I never gave it a thought then what it would be worth, no, sir. They raised number three or number two corn during the two years I mentioned. We shipped some 1369 graded number three and some number two. The best they raise is number two.

Cross-Examination by Mr. Chipperfield.

The highest grade of corn I know of is number two. 1370 The general run is about number three. There is a great deal that goes lower, number four and below number four it is no grade.

I do not know where Section 21 is located. I never 1371 knew what section it was before. I could not tell how much land Mr. Waugh farmed. I don't know where his lines were. I don't know how much he had over there aside from the fact he was raising corn.

1372 I had observed the river for some time before the Sanitary District water was turned in. I have no record of

what I observed. Before the Sanitary District channel was opened the Illinois River was a sluggish stream and for a short time in the summer months a foul odor would arise from it. At the present time the current is very much swifter, the stream is stronger and I think there is more water. At Peru the stream is about 300 feet wide and sometimes there is a pretty swift current there. The 1373 current is about three or four miles an hour, as fast as a man would walk. Before the District water was turned in there was no current. The river was sort of a stagnant pool. I have seen high water on the river before 1900.

1374 My place of business was on the hill, 125 yards higher
1375 than Water street. Prior to the building of the C., B.
& Q. water got into the cellars on Water street. I have seen the water that high since 1900. The highest water on the Illinois River came in the year 1883. I have seen very low water in the Illinois River. I know about the 1376 gauge being on the bridge, but don't know how low it
1377 got. I don't remember that. The lowest water I ever saw was in 1901. I could not tell you any month when the river was higher since 1900 than it was for the same month previous to 1900.

It is not fair to compare the river during a month like August or July with a flood month like February or March. My opinion is that it was higher since the water 1378 came in. I don't remember any dates. I cannot remember June, 1892, or June, 1902.

I remember sometimes before the Sanitary District water was turned in of the water being high when there was nothing raised on the bottoms. At those times the 1379 river would extend from bluff to bluff, about a mile wide. All of the land of Mr. Waugh would be overflowed and the boats could go anywhere on the bottoms.

1380 CHARLES CASTENDYCK, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Charles Castendyck; have resided in Peru 35 years, and am in business selling farm machinery.
 1381 Have been in business in Peru since 1878 on Water street two blocks and a half east of where the bridge crosses the Illinois River. Between 1880 and 1887 I was in business right at the bridge, since then at the former location.

1382 I reside on 2d street in Peru. That would be two blocks north from Water street and about 100 feet higher from Water street.

I know the land Sam Waugh was farming from 1890 to 1900. It was south of the river and west of the branch of the slough farthest east. The land lay east from the bridge across the Illinois River at Peru. Between 1890
 1383 and 1900 saw the land every day from Water street. It
 1384 was farmed in corn. The whole piece was planted in corn. During that time I was on the land a great many times. The soil was sandy loam, rich, and could be cultivated nicely. I was on the land when it was actually under cultivation and saw the corn growing there. It was just corn, very good crop usually.

1385 From 1890 to 1900, I was familiar with the flow of the Illinois River around Peru near the land. I would see the river probably twice a week. I knew since 1900 of the fact that the Sanitary District sent water down through this valley. The water in the river has been higher all
 1386 the time. It don't get as low any more as it used to and it stays higher longer. It takes longer to fall, it is slower falling.

I am acquainted with the uses made of this land since

1902. Since that time I have been over it two or three
1387 times a year. I saw the land this year. There is corn
on part of it and the rest not cultivated is in weeds.

1388 This year about half of the land is in corn. Last year
I should guess more than half. I never measured the
acreage on the bottoms either year. The corn this year
1389 is in patches, that is, there is a piece of corn and then
there is a piece of weeds.

Q. What, in your opinion, was the fair cash market
value of that land in the month of January prior to the
turning in of the Sanitary District water?

Mr. CHIPERFIELD: Wait a minute, I object to the basis
of comparison. The question is what was the fair cash
market value of that land.

Objection overruled; to which ruling of the court the
defendant, by its counsel, then and there duly ex-
cepted.

1390 A. Probably \$90.

Q. What was the fair cash market value of that land
in 1900, after the drainage was turned in, considering
all of the facts that you now know in relation to the flow
of the Illinois River?

Mr. CHIPERFIELD: I want to object, if your honor
please, as being incompetent, irrelevant and immaterial
and no proper foundation has been laid, and that the
question does not embrace the correct test, but is asking
the witness to take into consideration matters which have
accrued since the commencement of this suit and matters
of which he and no other person could have had knowl-
edge upon the 18th day of January or approximately
about that time.

Objection overruled; to which ruling of the court the
defendant, by its counsel, then and there duly ex-
cepted.

Mr. O'CONOR: Q. Did you understand my question, Mr. Castendyck?

A. Why, what was the value of the land after the water was turned in?

Q. In the year 1900? A. In view of all—

Q. In the month of January subsequent to the turning in of the Sanitary District water, considering in making your answer the conditions as you now know them, taking them back in other words to that date?

1391 Mr. CHIPERFIELD: I want to renew the objection to the question as re-stated.

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Why, I should say it was worth less than half.

Mr. O'CONOR: Q. What would the land be worth that is not planted to anything?

A. That I would not think had any value from an agricultural point of view.

Mr. CHIPERFIELD: I move to exclude the answer as no criterion of value in this case.

Motion denied; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

Cross-Examination by Mr. Chiperfield.

If anybody in the month of December, 1899, had suggested the fair cash market value of that land was \$100
 1392 an acre, I would not have been amazed at the suggestion; \$100 in 1900 and in 1899 was not considered a tremendous price even for top lands or prairie lands. I think I know of a piece of prairie land in La Salle County without improvements that had sold for as much as \$100 in December, 1899. I think there is a farm sold north of town for about \$100, the Winston farm. No, the Winston

farm was sold after that. I do not definitely recall the year. It was before 1899 or 1900, I think it was about 1393 in the early nineties. It was not unimproved land.

It is seldom that a piece of land is sold without any buildings on it, very seldom. I understand the land in this river bottoms had no buildings on it, no sheds, barns, fences or improvements of any kind. The buildings Mr. 1394 Waugh occupied were at the foot of the hill.

1395 I do not mean to have the jury understand that anywhere on Section 21 there was a single building of any kind. I don't know where the section line runs. The place Mr. Waugh occupied is on Section 28. The water 1396 sometimes gets up in the barn yard, but at that the ground is three or four feet higher than the field.

I just told you I don't know whether there were any farm buildings on 21. I don't know where that line runs. There are buildings there, but whether on Section 21 or the next section south, I don't know.

I don't know of any bottom lands which have changed hands at any time for as much as \$30 an acre before 1900. I take into consideration, among other things, the rental value of this land prior to 1900. I have no idea 1397 what rent Waugh paid. I don't know whether he paid \$500 a year. If it was rented for slightly in excess of \$1 an acre that would not be any return on an investment of \$100 after taxes were deducted.

Q. If the rental value of this land was slightly in excess of \$1 an acre you would then say that on that basis the market value would be \$100? A. I am basing my valuation on what the land would produce.

Land that would not bring over \$1 an acre certainly 1398 would not be worth \$100 an acre. It would not bring over \$10 or \$12 an acre.

Between January 17th and the 18th day of January,

1900, there would be a change in the market value of this land on account of the turning in of the water in view of
 1399 the facts that we now know, although it was not understood at that time. There was no change then. I qualify my answer to the value of the land at this time by saying as an agricultural matter. I do not see anything it is fitted for except agriculture.

1400 I know it is underlaid with coal, but how much I do not know. I haven't any idea on that, I can only tell what the surface is. If it is underlaid with a fine coal, a fine vein of coal located where it is near La Salle and Peru on lands that are at the edge of the field, the coal would certainly have a large value in January, 1900. I do not know that the value of the coal in January, 1900, was \$100 an acre. I haven't any idea. I suppose it would have a large and substantial value at that time. I exclude that from my calculation because I know nothing about it.

During the time I lived in Peru I have had a general knowledge that this land and all other lands similarly
 1401 situated was underlaid with a splendid vein of coal that was highly in demand when marketed. I exclude that from my consideration because I do not know anything about it. I do not know how much coal comes out of an acre or the cost of getting it out and all those things. I am not a coal operator or a coal miner.

Q. Then are you qualified to speak as to the value of this land for a coal proposition? A. No.

Q. Upon the question of what this land is worth you say you cannot put it for a coal proportion in January, 1900, you say you cannot put it into figures? A. I know nothing about that.

Q. Do you mean to say that if your advice had been sought as to your opinion of the fair cash market value along the latter part of January, 1900, of this land as a

coal field, that you would not then have had some opinion that you would have been willing to have stated at that time? A. I don't think I would.

Q. Would you have been forced to the conclusion at that time that you have no opinion of any kind upon that subject? A. Why, yes, I would not have had an opinion because it was a thing I knew nothing about.

I know that this land is held by the La Salle County Carbon Coal Company as a coal field, but exclude that fact in estimating the value because I do not know what the coal is worth. I understand even though I do not know what it is worth that it adds a large value.

Q. Then why, Mr. Castendyck, do you limit your idea of value of this land simply to the one purpose of raising corn when you know of the use that it is valuable for coal land in another particular? A. I said several times because I know nothing about that feature of it.

Q. But you do know in fairness that it does have a large value? A. It has a value, yes.

I don't know that it has a value in excess of one-half the price I named. I have never been engaged in the coal business. I have had information as to the value of coal
1403 lands, but have no information that would enable me to fix a value upon those lands as a coal field proposition in January, 1900.

In observing the river I had no gauge. I noticed the ice breaker on the bridge, on the upstream side of the bridge. There is a gauge on the down stream side. I
1404 never made any observation of that.

I remember the high water of 1883. I think it has been quite as high since, but do not recall just which year now. I remember the high water of 1892. I don't think the high water of 1902, was not as high as the high water of

1883 or 1892, by two feet. I would not think there would be a foot difference.

1405 Before the Sanitary District channel was opened in a general way I knew the lay of this land. I knew the bank of the river over on that side and saw the river in extremely low water. In extreme low water in the summer time before 1900, the water would be about 12 or 14 feet below the banks. I mean the bank of the river along in front of Water street, across the river immediately opposite
1406 site Water street. The land on the north side of the river opposite Waugh's at that time was five or six feet lower. Across the river to the land on the south side the water would get 12 or 14 feet lower than that land, at its lowest stage as I have seen it. I do not know that 12 or 14 feet lower than the top of that bank would be lower than the bottom of the river. I do not know that the ele-
1407 vation of the bank of the river at this point is 135 feet below Chicago datum and that the bottom of the river with the flowing banks full is not over 10 feet deep. When the bank is full the river is over 30 feet deep.

I don't know how large the sand bank is in front of
1408 this land. I don't know how deep the water on the bar is. Water street is eight or ten feet above the Waugh land. Low water at Water street is 20 feet below Water street. When the water comes up as high as Water street there would be a rise of 20 feet. I think there is a difference of 20 feet between high and low water on the Illinois River; 25, I think, would be placing it high; 22 or 23 feet is the extreme. I have seen the water higher than Water street. On the lowest place in the street there was six or eight inches of water and from that point to low water would be some 23 feet.

1409 I would not think that from the level of Water street to the lowest water that has been known in the Illinois River is less than 15 feet. I never made any measure-

ments or saw any measurements made. I think the water would be 12 feet lower than the Waugh land in low water. If the level of the Illinois River at the Waugh land at low water is 12 feet below the top of the bank to the land, the addition of four feet of water would still leave that water eight feet below the top of the bank, would
 1410 still leave eight feet between the surface of the water as it is added. Four feet of water above the lowest I have seen would not get anywhere near Waugh's land.

Prior to 1900, during the months of the summer, the average stage of water would be about two feet above low water; I think as much as from four to six feet. I know that before that time the Illinois River always got low during the summer, came within four or six feet of
 1411 the lowest water. If four feet would be added to the water then in its usual condition, that would still leave the banks eight feet out, and if four feet more was added it would still leave the bank four feet out.

The current in the Illinois River since the Sanitary District water was turned in is very much stronger. When it is high it is moving at a rate of about four miles an hour. I think the water is high now. The water has
 1413 been rising since the rains for some days. There has been approximately a three foot rise in the water during the past thirty days. At the present time the current is
 1414 flowing three miles an hour. I have paid no attention to the river in particular to get these things.

I saw the low water of 1901. I cannot recall definitely
 1415 if there was low water in July and August of that year.

I think the water was very low that year.

1416 The court took a recess.

1417 There was only a few feet difference between the low water of 1883 and the low water of 1901, would say three or four or five feet; I would say there was a great deal

more difference than nine inches. I would not say that
 1418 the high water of 1883 was a foot higher than the high
 water of 1892 or that the high water of 1883 was three
 feet higher than the high water of 1894.

I mean there is a general higher stage of water now.
 1419 I have not paid any attention to the rainfall or made
 any measurements. I know when it rains heavily the
 river rises, sometimes rises several feet. I do not know
 the average stage of rainfall, average amount of rainfall.
 I do not know whether last year there was 40 inches of
 rainfall when the average is about 30. I don't know
 whether in 1907 there was 38.79 inches of rainfall or that
 in 1902 there was 46 inches of rainfall. I don't know
 1420 what the rainfall of the various years was. When the
 rainfall is heavy it has a corresponding effect on the
 stream and when there is a deficiency it has a corre-
 sponding effect of lowering the stream.

Re-direct Examination by Mr. O'Connor.

It takes longer now for the river to fall than it for-
 1421 merly did. I don't think there is any difference in the
 value of the coal on the 17th of January as compared
 with the 18th.

Re-cross Examination by Mr. Chipperfield.

Cannot give you any instances when the river has risen
 1422 more rapidly. I know that there might be some differ-
 ence with reference to the taking off of the timber and
 tiling the land that effects the rapidity of the discharge
 of the river. I think that will affect the flow in the river
 some, naturally.

1423 OTTO HALM, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. Butters.

My name is Otto Halm; I live three and a half miles south of La Salle; age, 38 years. I lived in Section 21 before 1900. Worked for a Mr. Waugh husking corn
1424 there twice, I think it was in 1894 and 1898. I am farming now.

1425 I husked one patch of 12 acres and the other patch was 20 acres that I worked in. There was timber on the land in some places where there was no corn. Outside of the timber it was all corn. The corn was planted in different
1426 pieces.

There was a lot of different farmers farming different patches; all one field all the way through. There were teamsters farming there from town. Mr. Waugh did not farm it all. Some patches of 12 acres and some of 20 acres. The corn was a good stand and good yield. Some
1427 of the corn had weeds in it. I did not notice any place where it had been drowned out. The corn yielded 60 to 80 bushels to the acre. I was on the land once in a while between 1890 and 1900. I used to drive through there once a week or once or twice a month. Excepting 1892 the corn that was growing on the land was good. A good
1428 stand and good yield; looked good, healthy and strong.

Since 1900, I have seen the land once or twice a year. It looks about two-thirds in weeds and the other third in corn. This year about one-third in corn. The last few
1429 years the corn was soft. I don't know how much it
1430 turned out to the acre. The corn raised on the high spots and weeds on the low spots.

1431 Have noticed the condition of the water in the river

before 1900. The difference since is that it is higher up in its banks and stays up longer.

1432 I have an opinion as to the fair cash market value of the farm lands about the cities of Peru and La Salle in this county during the year 1900.

1433 Q. Have you an opinion as to what this land to which your attention has been called, being the land in Section 21, east of McCormick Slough, south of the river, and west of the river was worth?

1434 Mr. CHIPERFIELD: Object on the ground no sufficient foundation has been laid.

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. From \$90 to \$100.

1435 Q. Now, have you an opinion, Mr. Halm, as to what that land upon which crops were grown, as you saw it, what that land, same land was worth subsequent to January 17, 1900, after the water was turned in? A. You mean where crops grow now?

Q. Where there was crops, where there was corn grown on it; how much was that worth per acre, the fair cash market value of it?

Mr. CHIPERFIELD: Object to it, no proper foundation laid and it refers to matters that have occurred since the commencement of this suit and does not embrace the proper test of value of the land.

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. About \$40 to \$50 an acre.

Q. Now, how much was the portion of the land upon which no crops have been grown or were growing when you saw it, how much was that worth on January 17, 1900, its fair cash market value?

1436 Mr. CHIPERFIELD: I want the same objection to stand to that question, if I may have it.

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Well, I don't know. It ain't worth nothing.

Cross-Examination by Mr. Chiperfield.

I don't think it is worth anything for raising corn.

Q. You know the test is, as I understand it, and at least the one which I want you to adopt, is not for any single purpose, but for every purpose, and the purposes for which the land may be fitted. Now, if that is the test and if this land is underlaid with a high grade merchantable and marketable coal, it has a greater value than that, hasn't it? A. I was figuring on raising crops.

Q. I know you were and I am asking you now to take into consideration the value of this land as a coal property. You know, don't you, this land is owned by the La Salle County Carbon Coal Company? A. Yes, sir.

Q. And you know they hold it as a coal property,
1437 don't you? A. I don't know what they hold it for.

I know that this is a coal field in connection with the La Salle County Carbon Coal Company. If it was underlaid in 1900 with 3,500 to 5,000 tons of coal, to every acre, it had a large value at that time for coal. I did not take into consideration its use for coal purposes. I simply took into consideration if a man wanted to raise corn, not
1438 its market value, but the return it might bring in.

I know the Cox farm situated about two miles west of Tonica, containing 160 acres, being sold for \$125 an acre
1439 somewhere around 1901, 1902 or 1900.

1440 I have no connection with the plaintiff except selling them a few props.

The pieces that I husked in 1894 and 1898 were 20 acres and 12 acres. The biggest part of the land was husked by Waugh, but there were four or five other different parties farming a part of it.

1441 I think there is some change in the river now. The
current is swifter at times. There is a bank along the
1442 river by the Waugh land. I could not tell how high that
bank was above low water before 1900. My idea is four
or five feet, maybe six feet. I have not seen the river
lately.

Where I was husking in 1898 and 1894, I did not see
any corn that would go 120 or 125 bushels to the acre.
No places in the patch I worked where land two feet
higher than the rest where the corn would be poorer than
1443 the other corn, nor any place a couple of feet higher
where the corn would only average 40 bushels and a cou-
ple of feet lower 120 or 125 bushels.

EDWARD FRIEWALD, a witness for the plaintiff, being
sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Edward Friewald; I live about a mile and
1444 a half south of Water street in Peru. Have lived there
27 years.

I know the land at one time farmed by Waugh. I don't
1445 know what section the land is located in. I have been
1446 on the land that Waugh farmed and farmed a part of it
myself in 1906. In that year I rented 20 acres and planted
about half of it. The half I planted was planted the last
1447 of May and the first of June. In the fall I husked what
I planted, but never kept track of the character of the
corn. It was pretty fair. It was not as good as it ought
to be, though.

In 1906, there was quite a bit out. The high spots were
1448 farmed. All the high spots were planted, but the low
ones they could not work. The year after I tried to farm
it, but I did not get it in, the water came up and drowned
us out in May. That was 1907.

1449 I was not particularly acquainted with the Illinois
River before the Sanitary water was turned in. I would
see it a couple of times a month going to town. I noticed
a difference in the river and the river bottoms since 1900.

1450 The water is higher now than it used to be. In the
spring it would not dry off, it would stay up high enough
to keep the ground wet. I think more water comes in
some way and is held up.

1451 I noticed the land this year. It is pretty hard to tell
how much of the land is in crop this year; they just
farmed the high spots.

1452-53 Discussion and recess of court until November 18,
1912, at ten A. M.

1454 November 18, 1912, 10:00 A. M.

EDWARD FRIEWALD, a witness for the plaintiff, recalled
for further examination, testifies as follows:

Cross-Examination by Mr. Chipperfield.

I am 29 years old and was raised on the farm. Since
that time I have been engaged more or less in farm work.
1455 Am working at home for my parents farming 80 acres.
1456 Our land is on the high land on top of the hills about 75
or 100 feet higher. I have known the high land in Sec-
1457 tion 21 since I was a kid. I recollect the bottoms be-
1458 tween 1890 and 1900. I don't know much about the con-
ditions there before 1900. I don't remember just what
age I started to work down there, just remember a little
1460 about it. Those years the Illinois River was pretty low.

1461 I noticed the bank. The water would be three or four
1462 feet below the bank or a little better, possibly five or six
feet. I think it was four or five feet.

I know where Water street at Peru is. I never meas-
1463 ured it. The water is not overflowing the bend now. It
1464 is about a foot below. The water now is low, the river
is lower now than it was, you might say, for all summer.
It was once down a little bit lower, not a great deal. I
don't know whether it has raised three feet in the last
1465 thirty days. Pretty hard to say whether it is an inch
or a foot. It raised a couple of feet, I guess. I expect it
raised three feet.

When I first knew the river in low water it used to be
four or five feet below the top of the bank. To-day it is
a foot below the top of the bank. In the last 30 days it
1466 has raised three feet.

In 1906, I had 20 acres rented, a dry year. 1907 was
1467 a good year for good crops; 1907, could not get in there,
the water was high. It commenced to rain the latter part
of May; after that the water rose and came awful fast.
In 1906 got in about 20 acres. It was fair corn. I have
1468 no idea how much it went to the acre. I sold the corn.
I don't remember how many loads. Shelled prairie corn
with it and mixed it so I cannot tell the difference. I
1469 don't remember how the corn graded. At the elevator
they never said nothing about it.

I observed the current in the river since 1900. I don't
1470 know that it is flowing any faster. I talked with Mr.
McPhedron last week. Before 1900 did not pay much at-
tention to the current, not old enough to pay much atten-
tion to it.

1471 In 1906, a number of other fellows were farming
1472 patches of ground, may have been five. I don't know
how much corn I paid for rent. I put it in the crib at the
Vaugh farm.

THOMAS H. HALSTEAD, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Thomas Halstead; I live in Peru, 60 years
1473 old and I resided in Peru 26 years. Have been engineer
at the electric light and water works plant during the
past year. Before that I was threshing and shelling corn.
I owned part of the threshing outfit; in that business
about thirty-seven years.

1474 The past 23 years I lived on the hill in Peru. I know
the land that was farmed by Waugh. I have known it
for something like 20 years back. I have shelled corn
over there and have threshed on the hill. I cannot tell
1475 how long ago it was. It was fifteen years ago anyway.

I was there on more than one occasion. I think I was
1476 there within 10 or 12 years. Shelling outfit was located
next to the edge of the hill up on the high ground.

1477 Those years corn was raised there. It was all corn
outside of the timber land. Pretty good crops, maybe 90
bushels an acre.

1478 I did shredding just west of the Illinois Central tracks,
for the plaintiff. Took my outfit right in on the land. It

1479 consisted of a traction engine and a shredder. I think
it was about 13 years ago; it was in the winter time. I
was there pretty near all winter, the outfit stayed there

1480 a month; that was before the Sanitary District water
1481 was turned in. That is the only occasion I remember
that I had the outfit on that piece of land. I husked corn

1482 on the Waugh land, but I don't remember the years.
I had noticed the difference in the condition of the river.

The water is considerably higher. There used to be no
1483 water around a lot of trees we used to fish around.
Afterwards there was. Other places covered with water.

1484 I should think the difference in the water was about
three and a half to four feet. I fished from April to Sep-
1485-6 tember. I recall no differences other than I have
stated except there is more water.

1487 I don't know how much timber there was, in acres. The
timber was soft maples and willows, grew along the bank
of the Illinois River.

1488 *Cross-Examination by Mr. Chipperfield.*

To a certain extent have been employed by the plain-
tiff. Before 1900 fished quite a number of years in the
1489 Illinois River. I have gone back 30 years in my testi-
mony. I have fished right next to the Illinois River
1490 bridge and below and above. Fished down at the "Three
I" bridge down at Marquette. Have fished in DePue
Lake eight or nine miles down. I covered that in my tes-
timony. Also down at Sister Islands, which are seven
miles below Hennepin and about 28 miles below La Salle;
1491 also at Senachwine Lake, three miles below Sister Isl-
ands and above the Henry Dam. Senachwine Lake con-
1492 nects with the river. Its water comes from the Illinois
River. There is a difference in the level at Senachwine
1493 Lake and La Salle, but I don't know how much. I have
covered all these matters in my testimony in answer to
Mr. O'Connor's questions.

At all these places before 1900 there was both high and
1494 low water. In the spring the water would get high. I
do not remember the high water of 1883. I cannot refer
1495 to the year 1892. I cannot give you any specific year.
Sometimes the water would be higher and sometimes it
would be lower.

1496 I don't remember the water coming up to Water street
and flooding the basements of the business places that
were located there. I have heard them talking about it.

Water street is about ten feet higher than it was years ago, than it was 29 years ago last May. I don't know 1497 that Water street has not been raised by a foot and a half. It has been raised, but I don't know how much. I don't say.

1498 Along the bank buildings have been torn down. I only know what I have heard about buildings being flooded. I 1499 could not say whether buildings have been raised or not. I could not tell you. They are practically all stone buildings and brick buildings with basements. I don't know whether they are now in the same place or not.

I don't know whether the high water has been as high since 1900 as it was before, cannot give you the years. I don't know of any year that the stage of the water in the river is any higher now than it was before.

1500 Before 1900, if we got a big flood the river would go up. I don't know how much the greatest rise was in the Illinois River. I don't know whether it rose 15 feet or 23 feet. It rose as much as 12 feet; cannot say any more.

1501 I don't know whether the river has had a rise of as much as 22 feet. I don't know what the maximum rise 1502 was in 1892 or 1883 or 1890, or between the years 1890 and the year 1900, or between 1900 and the present time. I don't know whether the Illinois River since 1900 has been as high as it was before. When it is high it extends from bluff to bluff, three-quarters of a mile wide, possibly a mile. Have seen a vast river flowing through the valley.

1504 Have known the pumping station about 20 years. I haven't got any idea before 1900 how high in feet the pumping station would be above the level of the river when it stood at its lowest point; I don't know whether it was 30, 40, 50, 100 or 500 feet. I am satisfied it was 1505 not 500 feet. I don't know whether it was 20 or 25 feet. Have no idea. I have seen the water pretty close to the

road and have seen it low. I don't know how far it would be below the edge of the pumping station; the pumping station is about nine feet from the river. I never watched
1506 the high water stage, how high it got.

1507 Recess until 1:15 P. M.

1508 November 18, 1912, 1:15 P. M.

Court met pursuant to recess.

THOMAS HALSTEAD, a witness for the plaintiff, recalled for further examination, testifies as follows:

Direct Examination Continued by Mr. O'Connor.

Did not do any hunting on this land last year. I did
1509 not see them husking on the land. They were husking the corn and taking it out with boats. It was in the fall
1510 of the year, about husking time. Did not see more than one boat. The land was covered with water.

Cross-Examination by Mr. Chipperfield.

I guess they have husked corn a great many times in boats on that land. I stated this morning that I had marked different stages that I had observed for the purpose of locating low water on the Illinois River; the
1511 marks were all along there where there was a tree or anything like that, clear from Peru to Senachwine Lake, a little over 30 miles. Before 1900, the trees there every year would sometimes be in the water and sometimes out of the water, but since 1900 they have been in the water.
1512 There are quite a few of them located where I could show you. One right at the mouth of Huse and Loomis Slough. I don't know whether it was a soft maple or a willow. It is only a stump now, it was a tree. There are quite a few trees near it. You could not distinguish the

1513 tree unless you knew where the tree was. There is no
road there.

1514 The slough is located about a mile west of Peru and
connects with the river, a mile or a mile and a quarter
1515 from the bridge. I have told you where that slough was,
about a mile west of Peru and it connects with the river.
1516 The tree stands right in the water now probably three
or four hundred feet from the river bank. The tree is
1517 located on the edge of the slough. I would have to take
you out to show it to you, it is impossible for me to locate
1518 it. It was located along that slough just above the
mouth. It is not a very large tree. The standing water
1519 killed it. It did not stand in the water all the time, only
at certain times. At times of high water the water would
probably be 15 to 20 feet deep. It was a tree 25 to 30
feet high. At high water there would be some of it
sticking out.

1520 I know the condition of the river at the present time.
I seen it this morning. With reference to the bank where
the river curves, the river is about bank full. My judg-
ment is the river has risen in the past 30 days three feet
1521 or more. Before the river commenced to rise the tree
would be standing in water about $3\frac{1}{2}$ or 4 feet. Before
1900 the river at a low stage would be $3\frac{1}{2}$ to 4 feet below
the bank. No water around the tree. There would be
water around the tree when the river is from $3\frac{1}{2}$ to 4 feet
1523 below the top of the bank. At certain times of the year
before 1900, there would be water around the tree. Be-
1524 fore 1900, when the river was at its low stage, the water
would be eight feet below the top of the bank. Before
1525 1900 the base of the tree would be about a foot and a
half out of the water, maybe two feet.

When the river started to rise this last time it would
be more than three feet below the top of the bank. Be-
1526 fore the river commenced to rise about 30 days ago, I did

not pay any particular attention to it. I don't know how much water there was around the tree because I was not down there.

1527 Another particular point is a big tree about three feet through right across the slough. It is an elm tree. I don't know how much water was around it 30 days ago or how much there is to-day. In dry seasons before 1900 it was out from $3\frac{1}{2}$ to 4 feet. I know there is water around it as the river is just about medium stage, bank
1528 full. That stage is considerably more than a low stage. I don't know how much above low water a medium stage in the Illinois River is supposed to be. I did not say a moment ago that it was a medium stage.

I don't rememebr the low water of 1901 or of 1893,
1529 or 1896, or when the lowest water was that I ever saw before 1900.

Since 1900 I have not made any mark along the river and I don't know when the lowest water was since that time. I don't always go fishing at low water. I would
1530 fish in August for bass.

1531 At times in August and September, before 1900, the water was up around that tree and has not been since. It has been above them, but not below them.

1532 I have not observed the current of the river since 1900. I don't know how fast it runs. I don't know whether it is faster now than before. I have not made any close observation of the Illinois River either before or since
1533 1900 outside of fishing. My reason for saying the water is higher now is because I could not stand on the ground where I used to fish, I would have to go into the water and wade up to my knees. When the water was low since 1900, there would be three or four feet of water
1534 around these trees. That means the river has risen
1535 about six feet. I say that the river is six feet higher

now than before 1900 when I said on my direct examination it was $3\frac{1}{2}$ feet higher, because the river is pretty well up at the present time. The trees stood out $3\frac{1}{2}$ or 4 feet. I noticed that fact during the years from 1891 to 1903; 1904, I did not observe the same thing exactly. I last observed the trees were $3\frac{1}{2}$ or 4 feet out of the water in 1900.

The first year after the Sanitary District channel was opened I noticed the change I speak of. I don't know how quick the rise was after the channel was opened. It was shortly afterwards. It might have been the next week or so. I was not fishing in January. It might have been a week, a month, or two months that I observed more water. If there was a rise of $3\frac{1}{2}$ to 4 feet of water from the condition that prevailed in 1901, the trees have stood out of water $3\frac{1}{2}$ to 4 feet in low water, they would be just into the water as I understand it.

Did shredding on this land 10 or 12 years ago; don't know which it is. Did not keep any book or memorandum by which I can tell. I have no accounts in existence from which I can tell. I know, because there was no corn raised after the Sanitary District was opened. I do not know that in 1900 and 1901, full crops of corn were raised upon this ground. I know that there has been corn raised on the ground, pieces of it, since 1902. Corn raised there every year; there might be one year that there was not. I am not proposing to fix any date at all; I cannot fix the dates.

Put the engine and shredder there before the ground froze up, in November some time. It was probably frozen a little. I don't know how many acres of fodder we shredded there, but was there pretty near all winter. I don't know the capacity of the machine. Probably three or four acres, maybe five acres we could shred a day. I don't know how many acres of corn there was in there.

1547 I don't know when it was we did the shelling. In my estimation it was about 10 or 12 years ago, not 20. It
 1548 was somewhere from 30 years to 10 years. The sheller stood on the high land. The closest time I can fix it is from 30 to 10 years ago.

1549 M. J. CHARLEY, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is M. J. Charley, I live in La Salle, am 55 years of age. I worked land belonging to the plaintiff.
 1550 I first farmed land belonging to the plaintiff in 1887 or 1888. It was west of the Illinois Central and south and east of the Illinois river. The land that lies west of the
 1551 Illinois Central and south and east of the Illinois river
 1552 is the land I farmed in 1887. I farmed 15 to 16 acres. I farmed the land in 1898, say 20 acres. I planted corn.
 1553 There were others farming land in that neighborhood. All of it was farmed except the wooded land. It was planted in May. Cultivated the crops with teams and cultivators. Husked the corn. Husked the corn kind of late, it was kind of a bad season. All of the land to the best of my belief was cropped in 1898. The corn was of good quality and it ran about 60 to 65 bushels. After
 1554 1898 did not farm that land.
 1555 Have been acquainted with the Illinois river and the Illinois bottoms south of La Salle all of my life and since the Sanitary District water was turned in. During the last two years I have been over there very nearly every day during the planting and cultivating seasons.
 1556 Q. Referring to this piece of property, Mr. Charley, that we have been talking about, which lies west of the Illinois Central right-of-way and east and south of the

Illinois river, do you know what the fair, cash market value of that land was in the year 1900, before the turning in of the Sanitary District water, without stating what it was, do you know? A. Why, between \$95 and \$100, along in there.

Answer stricken.

Q. First, whether or not you know. Answer it yes or no? A. Yes, sir.

Q. Now then, will you state what in your opinion was the fair cash market value of that land that I just now described to you? A. About \$95.

Q. In the year 1900?

Mr. CHIPERFIELD: Just a minute. I didn't know his question was complete. I want to object on the ground that no proper foundation has been laid.

Mr. O'CONOR: My question was not complete.

Q. (Continuing): In the year 1900, prior to the turning in of the Sanitary District water?

The COURT: Overrule the objection.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. About \$95.

Q. Do you know what the fair cash market value of that land was in the year 1900, after the turning in of the Sanitary District water, taking into consideration the 1558 facts that you now know in relation to the flow of the Illinois River?

Same objection; objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Why about \$40 or \$45.

Mr. O'CONOR: Q. You will have to say yes or no first.

A. Yes.

Q. Will you please state what in your opinion was

the fair cash market value of that land in the year 1900, after the Sanitary District water was turned in, in the month of January, taking into consideration the facts that you know at this time in relation to the flow of the Illinois river? Now, you may make your answer.

Mr. CHIPERFIELD: Object unless it also includes the condition of the land. I object on the ground it is incompetent, irrelevant and immaterial and no proper foundation has been laid and that in asking a witness to take into consideration all the things he now knows in reference to the river, that it is an indefinite assumption that is only known to the witness and not disclosed to the counsel for either plaintiff or defendant, and now known to the jury, and does not include the highest and best use that can be made of the land.

1559 Objection overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. What was the question, what the value of the land was that year; \$95.

Mr. O'CONOR: Q. No, that was the first question. You will have to hear that question read, I guess.

(Question read.)

A. Why, about \$54.

Prior to the Sanitary District water being turned into the valley I was acquainted in a general way with the flow of the Illinois river and have been acquainted with its flow since. The difference I have noticed is that when
1560 I go down there in the spring time to put the crop in that you could go right along with it and put it in previous to the drainage water being turned in, and I know since then that the level of the river—it is up and down so that you don't know where you might stand. Sometimes go down there in the regular part of the season to put your crop in and you cannot get it in and you have got to

wait and put your crop in in sections. We had to run along say ten or fifteen rods and plow and harrow it and plant it, and then ten or twelve days go on and plow
 1561 about the same thing again and connect up the planting. About 10 or 12 days afterward we would do the same thing and we got the land pretty well covered.

Motion to strike answer as not being responsive to the question; motion overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

1562 I was going to say I was very much interested in the putting in of crops down there.

Motion to strike by the defendant; motion overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. And paid strict attention to it.

Motion to strike renewed; motion overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

Q. Are you at the present time farming any lands on the bottoms owned by the La Salle County Carbon Coal Company? A. Yes, sir.

Mr. CHIPERFIELD: Object to it as calling for the conclusion of this witness as to the ownership of this land.

Objection overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: More to strike the answer of this
 1563 witness as to the ownership of the land on the ground no foundation has been laid and that the record does not disclose he has any knowledge upon this proposition and the title cannot be established by parole.

Motion overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

Am renting land this year from the plaintiff. It is located east of the Illinois Central, and the "Q" Road cuts it up some, it goes right through it there. It is west of the Big Vermillion. I don't know what section it is located in. My knowledge is gained simply from looking at the plat but it appears here on the plat as located in the southwest quarter of section 23. A part of it overlaps the section and runs to section 24.

I started to farm that land ten years ago, in 1911. I never farmed it prior to last year or subsequent to 1900. Last year we started to plant about the 11th of May. We started out and plowed the high ground so far as we could go and then planted it. We had to let our six teams lie idle for about ten days, could not do anything after we got the high ground in. Then after the expiration of ten days we went on and plowed another piece and connected it up. And we done the same thing again until we got done pretty well.

In that piece there are about 69 or 79 acres, I am not positive which it is; one or the other. The crop matured. The corn grade number 4. This year we haven't got within 25 acres of what we had in crop a year ago. This year we got on the ground early. We did not get to plant all of the corn until about the 18th or 19th of May. We pursued the same methods of cropping this year that we did last.

Mr. O'CONOR: Q. Now, referring to this land located east of the Illinois Central, section 23, some of it being south of the right-of-way of the C. B. & Q. and some of it north and a small piece of section 24 lying between the right-of-way of the C. B. & Q. and the Vermillion river, state whether or not in the year 1900, in the month of January, you were acquainted with the fair cash market value of that land prior to the turning in of the district water of Chicago?

A. \$95 an acre.

Q. State whether or not, Mr. Charley, you know what the fair cash market value of that same land was in the year 1900, January, subsequent to the turning in of the Sanitary water, taking into consideration the facts that you now know in relation to the location of the Illinois River.

Mr. CHIPERFIELD: Objected to as being incompetent, irrelevant and immaterial, and for the further reason that the answer called for is to be based upon facts which are known only to the witness and are not disclosed to the court, counsel or jury. It is calling for the conclusion of the witness, and no proper foundation has been laid.

Objection overruled; to which ruling of the court,
1571 the defendant by its counsel, then and there duly
excepted.

A. About \$45.

I am the owner of bottom land and have a suit at the present time pending against the defendant.

Cross-Examination by Mr. Chiperfield.

From the fact I have a suit pending against the defendant I feel some interest in the outcome of this suit. I am desirous of seeing the plaintiff succeed upon fair means; I am desirous of seeing the plaintiff succeed in this suit.

1572 My business at the present time is farming and contracting.

I cannot state positively how much ground there is in the piece that lies to the east of the Illinois Central Railroad. I cannot tell you. To the best of my recollection
1573 it is about 79 acres. Went across the main "Q" track from one side to the other. Had nothing to do with the small piece over in 24, that has not been included in my

answers. In the year 1911, we had this all put in corn.
 1574 I got in the neighborhood, off the entire piece, I think
 about 9,000 bushels. I had 89 acres on the north; the
 piece adjoins that. It was about the same kind of land.
 And from the 150 acres I got 9,000 bushels of corn. That
 would average about 60 bushels to the acre but some
 places it would go more than that and graded number 4.
 Number 4 is regarded as good corn. There is number
 1575 3 and a little number 2 but considerable number 3. Num-
 ber 2 does not apply to new corn, it applies to old corn.
 On new corn there are simply two grades that are ap-
 plicable to this section of the country and that is number
 three and number four. The corn about Peru on the high
 and low land taken to market grades three or four. It is
 1576 divided between the two grades.

The difference in value in price of corn between three
 and four last year was a cent or a cent and a quarter a
 bushel. On the whole 9,000 bushels it would be something
 like \$90. I got $63\frac{1}{4}$ cents for my corn.

In 1912 we planted again. This year haven't got all
 my corn in, been picking a little over a week. I haven't
 got any of this big field in yet, none of the 79 acres, which
 was put in later than the other, we did not feel like pick-
 1577 ing it. The last of the field was planted the 18th of
 June.

The 25 acres that we did not get in this year is north
 of the waste pile. The waste pile is immediately north
 of the switch, on the south line. It is quite a long piece
 there to the west line and is closer to the east line. I don't
 1579 know how many acres there are in the dump. I never
 gave it any thought, perhaps $2\frac{1}{2}$ or 3. There is an oc-
 casional big rock runs down there when they dump the
 cars off.

1580 It was wet around the dump this year when we went

to put in our crop, the water came from the river, the overflow from the Vermillion river or the Illinois. There is a draw in there from the Vermillion.

1581 The land was planted in 1910 by a man named Shepard, also planted each year between 1900 and 1909. Aside from it being inconvenient for us to plant it all at one time, in 1911, we did get the entire land in.

When I attempted to fix the values for this land I have
1582 taken into consideration the land as an agricultural proportion. I took into consideration its worth for rental, its worth for raising crops, its rental value and the use that can be made of it, and the conditions have been about the same from 1900 down to the present time; very little variation, substantially the same. Since then if there was
1583 a heavy rain and the waters are raised and cover the land, just as soon as it stops raining, in an hour afterwards, it commences to recede and goes down very fast and don't delay at all only a matter of three or four days. In 1911, it did not delay us after we got started.

The rental value for the land for the year 1911, was two-fifths; this year it is the same. Other years I don't know.

In the year 1911, there was 4,500 bushels of corn raised on this land. The share of the La Salle County Carbon Coal Company would be 1,800 bushels or something like
1584 that and the selling price was 63½ cents I think. I never figured it up, I don't know whether the rental value would be \$14 an acre.

1585 I cannot tell how many bushels of corn will be raised on the land this year because it is moist and not dry; put in later. I don't know whether there was a great deal more of corn that had to be re-planted this year. It is true that if corn was not planted very early this year,

there was a time when by reason of heavy rains it could not be planted until quite late in the vicinity of this land.

It is my belief the corn this year will not grade. The 1586 ears are not well formed; the cob is pretty shaky, I mean the cob is not firm. Some of the corn is well dented and hard now.

Q. Mr. Charley, will you produce, if we pay you for the corn, a bushel of that corn picked at random, in this court room? Starting in and picking at random as a man would pick any bushel of corn, to be admitted as evidence in this case, if we will pay you for the corn? A. I don't know whether I want to go and do that work or not.

Q. Will you let us do it for the inspection of the jury? A. Why yes, provided you do and do it under the supervision of myself or somebody in charge.

Q. Will you go tomorrow morning under those conditions and let us pick a bushel of corn to be used as evidence in this case? A. No, sir, I won't.

Q. Under your own supervision? A. No, sir, I won't go tomorrow morning because I ought to be in bed this afternoon?

Q. Are you sick? A. Yes, sir.

Q. Will you send a man tomorrow morning? A. No 1587 sir, I would want to do that without being on the ground myself.

Q. Will you fix the time when you will go? A. Some time when I get in better shape, better condition, I will.

Q. Will you do it Tuesday? A. It depends upon what shape I am in. If I am in shape to go out I will.

I farmed land in this vicinity in 1887 or 1898, I am not positive.

1588 In the piece west of the Illinois Central right-of-way, there are 70 acres more or less. In 1887 I farmed 15 1589 acres. Last year it was all farmed. During all these

years there was farming operations going on there. I have not farmed any of the west piece since 1900.

1590 I took into consideration when I was asked about the rental value, the value of the crop and the adaptability and use and all those things in fixing the value of the land before 1900. I don't remember what rent I paid in 1898. It was corn, but I don't remember the proportion. I cannot remember.

In a general way I am familiar with the coal business. I know the location of the shafts around La Salle. I know the quality of the coal, it is a high grade of steam
1581 coal. From my experience it is high grade.

Q. Now when you gave your answers of \$45 an acre since 1900, as I understand you did not take into consideration the fact that this land is underlaid with coal, but testified simply as an agricultural proposition? A. Yes, sir.

Q. Now, if it is true—if that land is all underlaid with coal, isn't that a fact, Mr. Charley supposed to be? A. Why it is supposed to be.

Q. If it is true that this land is underlaid with a high grade of merchantable—with steam coal that you have spoken about, of course that would have added considerable to your answer as to the value as a coal mining proposition, would it? A. Yes, sir.

Q. Wouldn't it be your judgment, Mr. Charley, that if this land is underlaid with the grade of coal of which I speak, that this land of which I speak would have been worth \$100 an acre as a coal mining proposition? A.
1592 Well, I would not say for sure, I do not know what amount of coal there is to an acre so I cannot answer.

Q. If there be from 3,500 to 5,000 tons per acre? A. Well, if there be, I presume it would be valuable, yes.

Q. Wouldn't it in your judgment be worth \$100 an

acre at that time as a coal mining proposition? A. Perhaps it would.

I don't think I had anything to do with that piece in section 24. I think it is the piece that lies south of that, still I am not positive. This piece here lying immediately
 1593 north of the switch going in there, and south of that
 where I worked I didn't work it. It is a piece of six or
 1594 seven acres maybe.

CHARLES KENCKIE, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. Butters.

1595 My name is Charles Kenckie. I live at Oglesby, lived
 there ten or eleven years. I lived within a mile of sec-
 1596 tion 21, formerly farmed by Waugh. I lived there when
 a boy; am 40 years old now. It was about 20 years ago
 when I lived at that place. I remember Waugh was liv-
 ing on that land.

Since then I have seen it about every year. Between
 1892 and 1900, they tried to raise corn on it. Waugh and
 1597 Braun were farming it. Corn was raised all over it ex-
 cepting the timber. The timber was on the south side.
 The corn was good corn. I could not tell exactly what
 years I was on the land but I used to work for Waugh
 1599 and Braun. I worked six years off and on about 22 or 3
 years ago. I worked in the winter and fall cutting props
 and choring.

I know when they had their stock turned in there.
 When I worked there no water on the land to amount to
 anything except in the low part. I was there two or three
 1600 different seasons off and on. I have seen as high as
 1601 25 or 30 head of cattle and horses turned in there.

They started to plant corn about the first of May, some of them. I can't tell what years. The corn ran
 1602 right up to the river bank. I was there sometimes husking. I heard about the Sanitary District water being turned in. The year I husked the corn was matured. I worked on no bottom land except the Waugh land. I
 1603 cannot say whether I worked on this land subsequent to 1900. Worked there two years ago. I had a little piece rented there for myself. It was near the slough, about 25 acres and I rented it from the plaintiff. It ran
 1604 over the slough and ran east from there, quite a ways from the river, but I don't know just how far. It was medium ground. I farmed it three years ago and farmed the same two years ago and some three years ago. Not
 1605 farming any this year.

The first of the two years I have mentioned I got started to planting corn along the latter part of June. I could not do nothing with it hardly. I planted 25 acres as near as I can judge. I got soft corn. The next year I did not
 1606 plant any until along the first of July. I did not plant only a couple of acres. I did not get anything off of that only a few stalks. I haven't farmed any of it since. The other land west of the river, north of the river and east
 1607 of the slough was about the same.

Cross-Examination by Mr. Chipperfield.

Twenty-three years ago I worked on and off for Sam Waugh. I worked a couple of times during the summer, just a few days, just helping out is all.

In the winter 30 or 35 head of stock there all the time, running around eating the corn stalks. Sometimes in the
 1608 spring of the year the cattle would have to be taken out on account of high water.

I remember the bank of the river. Those days the

river would be down three or four feet below the bank. I have seen it as low as 10 or 20 feet in places where the banks are high. It was not a high bank right at the 1609 curve. At the curve I have seen it three or four feet below the bank.

Three or four years ago I had 25 acres of land and only got five loads off of it. I picked them off the south side. The rows were 80 or 90 rods long and about eight rows to the load. I haven't any idea how many such 1610 rows you have to have to make 25 acres. I threw the corn out to the hogs and they wouldn't eat it. The corn molded on the stalks. It rained on it and the stalks did 1611 not dry out. The corn was three or four feet high. The big stalks were five feet high.

Mr. McPhedron came to see me. I talked with him today. I haven't talked with him but saw him Friday. 1612 There was more than 50 bushels on the 25 acres but could not tell exactly how much there was.

I am running a threshing machine now and doing one 1613 thing and another. Some seven or eight years ago I quit farming and went into the threshing business.

1614 CHARLES DOOLEY, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Charles Dooley, I live in Peru Township, 45 years of age. I farmed land belonging to the La Salle 1615 County Carbon Coal Company. I don't know what section it was in. I was on the north side of the river. 1616 I see the figure 21 on the map. It would be in the 1617 northeast quarter of that section. I farmed this land from the year 1890 to 1900, about 20 acres. I continued to farm it down to 1904. The corn we got from 1890

to 1900 was solid. Before 1890 we used to get the crop in about the 15th of May.

1618 The fair cash market value of the land I farmed in Section 21, in 1900, in the month of January before the Sanitary District water was turned in, was \$65.

1902 was a flood year. 1903 had about 12 acres in crop.

1619 The corn was soft, sold it for 25 cents a bushel. In 1903, planted up to the 27th of June. In 1904, I worked the same place and got 14 acres in. Could not put any more in because it was too wet. The corn I planted sold for \$5 an acre in the ground, for fodder, half of it, and the other half I hauled home and picked it over. In 1904 had soft corn. I did not attempt to farm any more after that time.

1620 Have known the Illinois River for a number of years. I know generally when the Sanitary District water was turned into the valley. It raised the water, it floods the land so you cannot work it. We have not been able to get on it at all to work it at all in the spring of the 1621 year. Before the water was turned in we worked two teams down there. We husked corn in 1903. We waited until it froze up a little, did not start to husk until November. My brother farmed the land in 1905 and 1906. 1622 In 1905 it was soft same as the previous year. In 1905 had 12 acres in and in 1906 did not get over seven or eight acres.

Q. Now, I will ask you whether or not, Mr. Dooley, you have an opinion as to the fair cash market value of that land in the year 1900, in the month of January, subsequent to the turning in of the District water, taking into consideration the facts that you now know in relation to the flow of the Illinois River.

Mr. CHIPERFIELD: Objected to as being incompetent, irrelevant and immaterial and no proper foundation laid

and including in the elements of the question facts which are known only to the witness and which are not disclosed to the court, counsel or jury, and which do not appear in this record.”

1623 Objection overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

1624 A. Why I would say \$10.

Q. Is it practicable to farm it at all at this time? A. I haven't been down there.

Q. I am talking of it in the years so far as you know? A. No.

1625 *Cross-Examination by Mr. Chipperfield.*

It is too wet, you cannot get on it. During the four or five years that I knew it the water would get off in June in time to plant part of it. The rest of it would go off in a week or two. It would be all off by the first of July and then it could be plowed, only it was too late to raise corn. Sometimes if it wasn't for the fact it was too late, the land could have been worked
1626 after the first of July. There could be sorghum or something put in; millet could be raised there; sugar cane could be raised there. Turnips and cow peas could be raised there. Any of the crops that could be raised in from six to twelve weeks, could be raised there some years.

1627 The corn that I saw there was soft; if it was cut it probably could be used for silo purposes. The different vegetable crops, such as tomatoes, cabbages and garden crops, could be raised on this land if you got it in time. You could raise anything. I don't know anything about such crops whatever. I haven't taken that into consideration. If the land would raise these different forage crops and vegetable crops it still would not have any

value for me. I would not want to raise them. It would have some value if a man wanted it for that. I cannot understand that if the land was suitable for these crops it would not have a value or that it would have a considerable value. If a man could raise such crops there would be an additional value to the land but it would not to me. I don't want to raise them at all. I want to raise the longest crop but it could be used for other things. Because I could not raise corn it would not have any value for me although it would successfully raise all those other crops of which I spoke, still the land would be worthless and that is the basis upon which I made my answer in this case.

1629 I know this land had no houses or improvements of any kind on it, never had and that nothing ever could be on it. Fences would be washed away, also any improvements that would be put on it. In addition to that it was down south of this slough and the slough is connected with the Illinois River and as the river would rise this slough would rise and back out over the field.

I was familiar with the banks of the Illinois River along that piece to the west when I was down there. In 1630 low water the river was three or four feet below the bank before the Sanitary District was opened. I have not seen the river lately, not in two or three years. I think it was last August I saw it the last time. I don't know how high the river is at the present time.

1631 I was farming the land in 1900. I got a good crop, good solid crop, in 1900. The water did not get my crop in 1900, I had a crop in 1900 and I had a good crop in 1901. It was a dry year. In 1900, the water stood three or four feet below the bank—I think two or three feet. In 1901, it 1632 was lower than that. In 1901 it stood four feet below the bank. I saw the river lower than that in 1888 and along there. I have seen the river three or four feet lower

than in 1901 as I recollect. I do not know that the water of 1901 was the lowest recorded water in the river.

In 1902, I got no crop, it was a flood year. In 1903, 1633 I planted it and got a good crop. In 1904, I got 12 acres; I only husked a part of it and sold the other part for \$5 an acre. The corn that I kept ran about 60 bushels 1634 to the acre, but it was soft. I picked it over and fed it to the cattle and hogs. The other land ran about the same; it was planted later and it was still softer than what I got.

My brother farmed it in 1905 and 1906. He had about the same kind of luck I did; a little over half of it was utilized in those years and the corn was softer than 1635 usual. I don't know what the market price was that year. I think it was around half a dollar as I remember it. It was solid corn. In 1903 it was as high as I remember it.

I stated that in 1900, taking into consideration certain things, that in my mind this land would be worth \$65 an acre. I don't know of any land situated similarly to that which sold for anything like that before 1900. I don't know of any sales being made. I based my statement as to the market value of the land before 1900, on 1636 the crops we used to raise. I do not fix it on any actual transactions. I take into consideration the rental value and crops that were raised and the use for which it was adapted.

I paid from 1890 to 1900, \$3 per acre cash. In 1900, \$3; 1901, \$3; 1902 paid no rent; 1903 and 1904, \$1. 1637 When I answered as to the value of the land since 1900, I was considering it only from the standpoint of the corn raiser and excluded every other consideration that would enter into the value of the land. If it has a value for other things I have not considered them.

Corn takes the longest to mature of any crop that I know of.

I did not take into consideration since 1900 the value of this land for coal. I know the La Salle County Carbon Coal Company who claims to own this land is a coal mining corporation and that this land has been gotten together for the purpose of coal mining operations.

Q. Now, knowing that, Mr. Dooley, when you are asked what you think is the fair cash market value of this land, don't you think you ought to take that into consideration? A. Well, I wasn't considering coal at all.

Q. But in fixing the fair cash market value of land, as I understand the rule, it is the duty of the witness to take into consideration the best and highest use for which the land is fitted, and not only that, but every use for which it is fitted. Now, if that be true and you are called upon to take those things into consideration and you do take into consideration the coal, you would say, 1639 wouldn't you, that this land in 1900, had a very considerable value for coal land, you would have to say that, wouldn't you, Mr. Dooley? A. Well, you know—they could get the coal no matter how much water was there.

Q. That is true, but it is also a question of the entire value of the land? A. Yes.

Q. And when you take into consideration every use or the uses for which the land is fitted and you know there is coal, with the understanding that there is a coal field of that kind, do you think you can fairly exclude that coal? A. I would, yes.

Q. You would not consider it? A. No. The water would not effect the coal.

But in fixing the value of the fee simple estate the coal goes with it under such circumstances. In fixing the 1640 value of the land you would have to add to the value

of the land as fixed for agricultural purposes whatever the coal is worth. You have got to add a considerable sum for the coal.

Q. Don't you think, Mr. Dooley, under those circumstances, if it be true, that the land would be worth \$60 or \$65 an acre for the coal that is contained in it? A. I don't know anything about that.

Q. You are not able to fix a value on the coal? A. No.

Q. But in your figures that you have submitted you have attempted to fix no value whatever upon this coal? A. No, I have not.

Since 1901, the water has been higher. In 1900, and 1641 1901, I saw not much difference. In 1902, it was awful high. I don't know how much water stood upon the land, it stretched out from bluff to bluff. I don't know how much water there was. Would have had trouble to get 1642 down there in a boat, it was so wet.

In 1904, the water got about three feet I think below the bank.

1643 Before 1900, we did not pay the \$3 a year rent if we did not get a crop. Outside of farming before 1900, I used to team. My brother's occupation was teaming.

I market the corn I did not feed.

1644 SAMUEL PIERCE, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Samuel Pierce, by occupation miner; I work in Number 1 mine for the plaintiff. I have lived around La Salle 40 years.

I have seen the map marked Exhibit 13, before. I

1645 worked on the land that lies west of the Illinois Central and south and east of the Illinois River about 20 years ago. I could not state what year. I was working for Bert Pain. Pain lived on the top of the hill facing the land, half or three-quarters of a mile away. He did not farm all of the land, but farmed what he could. There 1646 was no one else in there farming any. There is quite a lot of it in there. There is a slough and willows and so on. The willows are next to the Illinois Central and on the south road or near the south road.

I think I did farm work in there four years; I think it would be since 1890. I plowed and cultivated corn. 1647 Got in there to do plowing in May. I worked three teams. Pain and his father worked with me.

I did not husk any of the corn during these years but saw some of it. Pain hauled it to his place. They raised good corn, a good crop, fully matured. I have farmed none of the land since 1900.

1648 *Cross-Examination by Mr. Chipperfield.*

I am working for the plaintiff as a track layer. Oglesby is six miles from Perry. One of the shafts of the plaintiff is located there.

1650 I don't know what rent Pain paid. I last worked there 14 or 16 years ago. Worked on the farm in slack times. There were no houses, fences or buildings on the land, nothing but the naked land.

1651 The water of the Illinois River would overflow it at times. I could not say how much, have no impression.

1652 I do not know the number of acres that were in crop. I would say, though, as a guess, 35 to 40 acres. The land lay in a three-cornered piece; one side was the river, the other side was the Illinois Central and the river and the Illinois Central came together like the apex of a

triangle. The base of the triangle would be the high road.

1653 Along south side of the piece there was quite a considerable piece of timber and swamp. On the south there

1654 was a number of acres of timber, willows and other trees which had not been cleared up, and on the river there was a considerable fringe of timber. Then along the Illinois Central there was a considerable fringe.

1655 I told Mr. O'Connor there was a slough on the south side of it between the bottom lands and the hill. The slough was north of the road. It was right close to the road, some of it, and it covered several acres of land. Some of it was deep. At times it was connected with
1656 the river, in times of high water and when the water would fall it would leave a slough standing on the land; the outlet would be cut off.

No one lived on the land. No live stock was ever kept there except for a season, just for a while after the corn would be taken. When the water rose it would be necessary to take the live stock off to the hills.

1657 EDWARD SHANNON, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Witness excused.

Court adjourned to Tuesday, November 19, 1912, at 9 o'clock A. M.

1658 November 19, 1912, 9 A. M.

Court met pursuant to adjournment.

The COURT: You may call the jury.

Mr. CHIPERFIELD: Before you call the jury I have a

little motion I want to make in regard to some evidence.

I move to strike from the consideration of the jury in this case and to exclude therefrom upon the question of area, injury and damages, that part of the northwest quarter of Section 23 which lies north of the Illinois River and which is designated on the plat by the figures 15.23 acres; also that portion of the east half of the southwest quarter of Section 23, which lies east of the Illinois Central Railroad; also that portion of the south half of the southeast quarter of Section 23, which lies south of $4\frac{1}{2}$ acres off the north end of the south half of the southeast quarter of Section 23, all in Township 33 North, Range 1 East of the Third Principal Meridian.

Now, in doing so, I based my motion upon the fact that none of this property is described in the plaintiff's declaration and as this is a matter which the court will have to determine, will you lay your plat there so that the court can follow me in my description as I have the exact description.

THE COURT: If what you say is true, the court hasn't anything to decide. The court will not decide that if it is not in the declaration.

1659 MR. O'CONNOR: We are coming to that, your Honor.

THE COURT: Then as to the balance of the description if that is true there won't need to be any discussion about it.

MR. CHIPERFIELD: I thought the only chance for any discussion might be as to what was embraced in the declaration. We have been over that very carefully and we are firmly convinced that none of it is included in the plaintiff's declaration and on that contention, here of course, as you suggest, if that is so there is nothing to argue.

THE COURT: If it is not in the declaration.

Mr. CHIPERFIELD: I am not objecting to the plat now, it shows the relative situations of the property, but it is to these pieces.

The COURT: Let's see what they say, if they say that is not included in the declaration—

Mr. O'CONOR: This part is not in, that was put on this plat in error.

Mr. CHIPERFIELD: All right.

The COURT: What is that, 19—

Mr. O'CONOR: 19.23 acres which lies north and west of the Illinois River.

The COURT: That is excluded then by agreement.

Mr. O'CONOR: Northwest quarter, Section 23.

The COURT: That goes out then by agreement. What about the balance of it? Or you wanted until after dinner to look that over?

1660 Mr. O'CONOR: No, I have checked this all up.

The COURT: Very well, we will dispose of it now.

Mr. O'CONOR: My recollection at this time is, although I would not want to consent to it going out right now—

The COURT: Well then you better take until afternoon to look it up.

Mr. O'CONOR: That acre and a tenth—

The COURT: What is that?

Mr. O'CONOR: This acre and a tenth located in the southwest quarter in Section 23, lying east of the right of way of the Illinois Central, I don't think is described.

Mr. CHIPERFIELD: I don't think, Mr. O'Connor, if you will permit, that anything around east of the Illinois Central is included in the declaration. I have looked it over with a great deal of care. I can be mistaken about these things very easily, but that is our deduction.

Mr. O'CONOR: Now, I am inclined to think that that is right on that acre. Now, this piece here lying north—

The COURT: Well, then, if it is you better let it go out.

Mr. CHIPERFIELD: I will suggest this, if Mr. O'Connor finds upon investigation that is in that it may be re-submitted.

The COURT: It goes out then by agreement, that part does. What about the remaining part?

Mr. O'CONOR: That $4\frac{1}{2}$ -acre piece I think is described in the declaration.

Mr. CHIPERFIELD: Yes, described in the declaration, but
1661 let me suggest, and I don't want to interrupt your statement in any way, but this south section line comes here (indicating) there is your division of that section. Now, the $4\frac{1}{2}$ acres would come about where I have suggested and I have taken the liberty in sketching the plat to mark it there, which I had no idea you would object to.

Now, this part east of the switch, this part here north of the switch on each side of a line drawn across here, is not included in your description. Your northeast, your northwest quarters are within this $4\frac{1}{2}$ acres across here, and everything south of that running down to the switch is not included in your description.

Mr. O'CONOR: We are not claiming for it, your Honor.

Mr. CHIPERFIELD: Well —

Mr. O'CONOR: We are claiming for the northeast quarter and the northwest quarter of this quarter section and we are claiming for the north $4\frac{1}{2}$ acres of the south half, that north $4\frac{1}{2}$ acres of the south half would be the $4\frac{1}{2}$ acres in here (indicating).

Mr. CHIPERFIELD: Now, the only difference then is this, that Mr. Irwin in making his computation has included some eight acres more than is warranted by that description. He goes south of the northwest quarter—on the northwest quarter there is no dispute as to that being included in their description. I don't want, of course, to concede anything concerning ownership, but in their description it is included. It is the northwest. And

1662 the $4\frac{1}{2}$ acres across the north half end of the south half of the southeast quarter is included and comes down to the railroad here much further distance and includes some eight odd acres in addition to the $8\frac{1}{2}$.

The COURT: I see. That is the only point then between you really.

Mr. CHIPERFIELD: Then as the figures of Mr. Irwin, I saw Mr. Irwin this morning and he wanted to go out in the country and I suggested to him, I inquired how he got those figures and he explained very curteously how he did. He will be in tomorrow morning at 9 o'clock he said, and I would like to ask him a couple more questions on cross-examination as to the difference in the areas beyond the $4\frac{1}{2}$ acres.

The COURT: Well, I will let him correct it then.

Mr. CHIPERFIELD: Yes. And also Mr. Irwin has discovered that he has made in these two pieces, Mr. O'Connor, in his addition of these two pieces a mistake of 10 acres.

Mr. O'CONOR: Where?

Mr. CHIPERFIELD: It was in setting down the figures, it foots up 58 or 59 acres and he has set it down in his total as 69 acres. These are the figures, are they not, Mr. Heilbrom?

Mr. HEILBROM: Yes, sir.

Mr. CHIPERFIELD: And as to the total he said 446, and he included 10 acres here and 19 there, and an acre there and 8 acres there, that are all embraced within this description.

The COURT: I will allow you to recall Mr. Irwin and correct what seems to be an error.

1663 Mr. CHIPERFIELD: He wants to make a correction anyway.

The COURT: That seems to be the only difference between you.

Mr. CHIPERFIELD: He wants to make a correction as to the error of 10 acres in his computation which was purely an error of transcribing.

The COURT: I will allow you to recall him for that purpose. You may call in the jury.

EDWARD SHANNON, a witness for the plaintiff, recalled for further examination, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Edward Shannon, I live at Shippingsport. Shippingsport is located, with reference to the City of 1664 La Salle, about three-quarters of a mile south of the city limits on the south bank of the river. I know where Shippingsport bridge is. I live about 220 feet east and south. Shippingsport bridge crosses the Illinois River. I have lived here about 16 or 17 years. Prior to that time I lived in the City of La Salle.

1665 My business is fishing. I have been engaged in it exclusively since 1905. I have been acquainted with the Illinois River since 1880. I took up my residence south of the river in 1895. During that time my occupation 1666 has been mining coal in the winter and some in the summer. Otherwise my occupation has been fishing. I live a little over 300 feet from the river. I know the road that runs east and west along the bluff, they call it the Deer Park Road. I live north of the road.

1667 From 1895 down to the present time I would see the Illinois River every day during the fishing season unless I was ill. I can see over the bottom lands from where I live. I fish all the way from Rockwell shaft on the bottoms and then I would fish in the lake.

In a general way I know the condition of the Illinois River as to levels prior to the turning in of the Sanitary

District waters, and know it since in a general way.
 1668 Gathered my information from taking observations. I
 took notations for a while. I don't know whether it was
 for the defendant or the Washington Hydrographic Office.
 I don't remember what years. It was since the drain-
 age water was turned in.

There has been a difference in the stage of the Illinois
 River since the Sanitary District water was turned into
 1669 the valley. The river is a good deal higher than it was
 before the drainage was turned in; rising every year; it
 is getting higher each year. In the last three years it
 has raised each year, the low water stage is higher than
 the preceding year. I have some permanent marks by
 which I can determine the rise. There is a stone in front
 of the south pier of the bridge that used to go bare
 1670 prior to the turning in of the water and when I used to
 take measurements I went to the rock to determine it. It
 was right in front of the south pier of the Shippingsport
 bridge. I found that this season the general average was
 about $4\frac{1}{2}$ feet over that as compared with former years
 prior to the drainage water coming in. At the bridge
 there is also piling, the piling of the bridge, but there
 never was any mark placed so that I could determine
 exactly to estimate from the pilings. The pilings were
 west of the Shippingsport bridge. I don't know when
 they were put in there originally, I was not there.

1671 Prior to the turning in of the water of the Sanitary
 District I should say those piles on the west side of the
 Shippingsport bridge could be seen every year in low
 water. Some of them would project two feet above the
 surface of the water. They were not uniform in height,
 some of them would be five inches out, some six inches
 and some two feet. I have not seen them over the water
 since about three years after the water was turned in.
 I did not keep any correct track but I think it is about

1672 three years. I have seen them under water, passing over them with a boat in low water in the summer. It is pretty hard to determine how far below the surface those pilings would be in low water. I think the last time I saw them they would be six or seven inches under water at low water.

1673 Also in using my nets when I set them in low water they would be in the path where formerly it was tramped down hard. And I set four foot nets and it was covered in low water. That is low water on the land formerly along the river where there was a path. That was on the south side where the path was. Where the path is at the present time I set the nets and the water covers the four-foot net.

1674 The water covers the outlet of the lake to the river. The body of water which went down there, that lake outlet, is located at the south of the canal and comes out in the river about at the point where the canal comes into the river. That is what I call the lake. Formerly I used to have to get out in low water and push the boat through. There would be just a little water running out
1675 of the lake that kept the mud wet and I would push it through. Late years I row right through the water into the lake with a seine boat.

During the summer I would spend two or three days a week on the river. I fish in April and start in July, August and September, and on until it freezes up.

The water falls slower, the flood water is slower going down. I don't think there is much difference in the rise of the river, but if there comes a heavy rain, of course
1676 the harder it rains the quicker the river will rise. The general level of the river is higher.

Cross-Examination by Mr. Chipperfield.

I was formerly engaged in mining coal until the winter of 1895, since which I have been engaged in fishing.
 1677 Formerly lived in the City of La Salle and moved over to where I now live in 1895. It would be about 17 years
 1678 ago. Seven years ago I was living in Shippingsport. I was generally acquainted with the Illinois River. I did not know the land Sam Waugh farmed at the time he farmed it.

1679 That is the bayou which Mr. O'Connor called a lake on the plat, which you have, and which empties in near the Illinois and Michigan Canal. I am acquainted with that locality. I live close to the Shippingsport bridge, about
 1680 180 feet from the south end of it. Have been acquainted with the curve in the river since 1890. I don't know the height of the bank on the side of the river opposite
 1681 Peru; on the lands Waugh was farming. As a guess I would say that the bank in low water was ten feet above low water.

1682 Q. Then since 1900, when you say there was low water on the river, about how low from the top of that bank would low water be since 1900? A. Well, that question is pretty hard.

Q. I wish, Mr. Shannon, if you can, you would answer the question.

Mr. O'CONOR: Will you read the answer, please?

(Answer read.)

1683 Objection by plaintiff; objection overruled.

1684 A. Well, I couldn't state the exact amount where it is below the bank now. It might be five feet.

That is my best judgment. When I say now, I mean general low water. I am not testifying about it to-day.

The river has raised during the past 30 days 18 or 20
 1685 inches. When it started to raise it was not the lowest

1686 water I have seen since 1900. It would take some time to answer that question. I could not testify under any 1687-9 circumstances to the lowest water I have seen since 1900. When I say there is a difference in the river since 1690 1900, I refer to low water. The lowest water I ever saw in the river before 1900, was at the rock that I swore to that I stood on and fished. At the present time the level of the water is about seven feet higher more or less.

In June or July this summer the river was about a foot lower than it was before it commenced to rise. It 1691 might have been 14 inches. Altogether the river was $4\frac{1}{2}$ feet lower than it is now.

I only heard about the drainage being turned in some 1692 time in 1900. I have previously testified as a witness against the Sanitary District in former cases. At that time I might have testified that the drainage canal was opened in the summer of 1899, I think late in the sum- 1693 mer. I think that was my testimony. The Sanitary District channel might have been permanently opened on January 17, 1900, but it was opened and water turned into the Illinois River before it was permanently opened, 1694 in the summer of 1899. I refer to July or August, I couldn't say which. I don't know what they did on the 17th day of January, 1900, or whether that was the first 1695 time the Bear Trap dam was lowered. The water could not be turned into the Illinois River before it was in the Sanitary District channel.

In the summer before when they turned it in, the 1696 water rose probably a foot. I could not say whether or not on the second day of January, 1900, for the first time in the history of the world, the water from the Chicago River was turned into the Sanitary District channel, and that on the 17th day of January the gates were opened

1697 and the flow commenced. They turned on the water. They may have shut it off that winter and turned it on the following summer and then it would throw me off.

On the former trial I testified that before they turned 1698 the water permanently and kept it on, they had shut it off. They turned it on in the middle of the summer and raised the river and then shut it off and opened it up again in the fall and it has remained at that ever since, remained up. The summer before it was permanently opened I noticed that the water came up in the river. It came up a foot and I think it stayed up a couple of weeks, two or three weeks, and then it went down 1699 very low. That is the last time I saw the rock.

On the former trial I might have testified that I had not seen the stone which I speak of for 10 or 12 years 1700 prior to the time, 1908. I may have testified that I said I did not see the stone in 1906 and that it had been 10 or 12 years since I saw the stone. The last time I saw 1701 the stone might have been 1899, 1900 or 1901. During the 25 years, I have known the rock, I have seen it probably a dozen times. I don't know whether on the trial in 1908, I testified that I had only seen the stone three or four times. I cannot remember how many times. I saw it five or six different times. The stone was located in front of the south pier, the surface is about two feet square, it rests on the crib, it is in the crib. The wood 1702 work on the outside stood two or three inches, maybe, above the water. I would not swear whether the stone is there now or not. I cannot remember the lowest water 1703 I ever saw in the river in comparison with that stone.

I don't remember whether I testified in 1908, but I measured the water all over the stone since 1900. If I 1704 testified to it I done it.

I don't remember whether I said in 1908: "I think the

last season I saw that rock, I think it was a pretty dry season, if I remember right; part of the season was dry and very low water."

1705 If I said at that time that the two foot measurement which I took above that rock indicated the lowest water I had known of in the Illinois River since the Sanitary District water was turned in, it is true. I don't know
1706 how much lower the water has been on the rock than two feet. I cannot remember. I cannot give any time that would be anywhere near the time.

I may have testified that at one time I tested with my oars as I went by the bridge and found the water was
1707 standing one foot on the rock. The water has not been four or four and a half feet over the rock ever since the water was turned in, but it has been this last year.

It would be absolutely impossible for me or any other man to answer what has been the lowest water on this rock that I have seen since the Sanitary District was turned in.

1708 Now the water falls very slow, but the rise depends on the rains. Here we get the result, if they lower that dam for two hours; after the time they lower it there, it will show here in about two hours. It might not be the same two hours and it might be ten hours; the time will correspond with the time there. I don't remember that I testified in 1908 that before 1900 the water used to fall very fast. Before 1900 I have known it to fall a foot in
1709 24 hours. I have seen it fall 18 inches in 24 hours. The reason I testify 12 inches now instead of 18 as I did in the other trial is that I am a little more conservative now.

I don't know whether I testified in 1908 that in my judgment the Illinois River had raised from its usual condition before 1900, 18 inches. It it was it was correct.

1710 Q. I want you to answer my question. Didn't you say in 1908, that in your judgment the Illinois River had raised over its usual condition 18 inches? Wasn't that your testimony in 1908? A. Well, if it was, I guess it was.

Q. I am not asking you if it was your guess it was. I am asking you if it was? A. If it was my testimony then, it was. I don't remember now what it was.

1711 I think my testimony in the Brannan case was the general average of the river at that time was about two feet and eight or nine inches. If I testified it was two feet and eight or nine inches, then I testify that it is $4\frac{1}{2}$ feet now on a general average because since last July its general average has been $4\frac{1}{4}$ feet. I don't know there has been no change of flow of the Sanitary District channel for more than $3\frac{1}{2}$ years. I know that the rise of the water was 14 inches in July and it has maintained that average since. Since then it has raised 20 inches in the last 30 days; 34 inches altogether.

1713 Before the water started to rise the 14 inches, in July, it was probably close to four feet above the rock. I made no measurements except in October months.

I understand the Illinois River is influenced by rains within its water shed and that its water shed extends over into Indiana, also into Wisconsin, and that if there
1714 are rains in these points it raises the river. I know the river rises according to the rainfall. Just as it did before 1900.

1715 It is my opinion some parts of the bottom lands have been raised by the overflow from the river. Down in the timber along the river bank in the vicinity of Shippings-
1716 port bridge there is a rise probably of four or five feet. The entire channel in the river is getting deeper all the time; the river channel is wearing away.

I did not say in the Brannan trial that the river channel had worn away four or five feet. There is a difference in the change of the current as compared with 1900. Before 1900, the current was not over a mile an hour, since it is two miles. I said in the Brannan case I know that the current runs stronger than it formerly did. I might have said it runs twice as fast. I did not say it runs three miles an hour. I said it may have gone as fast as two and a half miles an hour. The current is faster in high water than in low water.

At a medium stage at Peru the current is faster in the vicinity of the bridges than it is at high water. Sometimes the fall of the water increases the current when it is falling.

I think the water was higher before 1900 than it has been since. I saw it going over the protection bank at Lock 15 near La Salle before, but never have since. There may have been two feet on the bank. It was in June of the big flood year; I don't know whether it was in the eighties or nineties. The highest since then within a foot or eighteen inches of the earlier high water mark.

When the river extends from bluff to bluff the stream would be a little over a mile in width, possibly a mile and a quarter. In places it would be ten feet on the bottoms, some fifteen, some twenty. Between extreme low and extreme high water the difference is 22 feet.

I took the gauges on the Illinois River correctly and sent them in correctly after 1900. I don't remember the lowest water I saw by the gauge readings.

If I said that upon a former occasion upon one day during the time I had this gauge established that I saw the water fall 12 inches within 24 hours, I did, that is all. I don't know. I have seen a fall of 12 inches in 24 hours since the drainage channel was opened.

1727 Q. Then what do you mean when you say that the river falls as fast since as it did before? A. Why, the water was shut off from the drainage.

Q. How do you know? A. Why, they shut off the drainage, it dropped right down 12 inches.

1728 I assumed that they did so from the fact that the water fell that way. When the river rises we say it is because the Sanitary District is sending down more water, and when it falls we say it is because they have shut the water off. I do not know as a matter of fact that the flow of the Sanitary District for the last three and a half years
1729 has been constant and continuous. I don't believe it. I am assuming from what I see on the river. I never was at Lockport, never have seen the Drainage Works and have no knowledge of the way they flow the water. I simply mean when I say that the river fell 12 inches that I concluded that the Sanitary District shut off the drainage water, since 1900. I have no knowledge about the matter, just concluded it.

There was a path by the river side where I was formerly in the habit of walking on the south bank of the river, east of the Shippingsport bridge four or five hundred yards. In low water before 1900 the path would be three or four inches above water. Sometimes it was less and sometimes level with the water. In the lowest water before 1900, I could not tell you how far that path
1731 would be above the water; maybe three or four inches. A rise of three or four inches would put the path out of commission unless you wanted to get your feet wet.

1732 I fished during July. The water was not always the same level. I cannot say how low I have seen the water in relation to that path since 1900; I never took measurements. I set nets there on the path the last two
1733 years. Think there have been times since 1900 when

there was not four feet of water on the path. Cannot say how deep it was. I don't remember seeing the path since 1900.

I spoke about the piles below the Shippingsport bridge. There was some old work there that had been connected
 1734 with the bridge before. They stood two feet out of the water, the highest of them, but not all of them. In the lowest water I have seen on the Illinois River those piles are two feet and a half above the water. That was before 1900. The piles are there now on the down stream side
 1735 below the piers. I have seen the piles since 1900, I think it was the first year. I have no idea how much
 1736 water is on the piles to-day.

I spoke about a lake where I used to pull my boat through before 1900. I was fishing. Have been there every year except the flood year. I now find water where
 1737 I used to drag my boat, 18 to 20 inches of water in the ditch this season. Three years ago I had to push my boat through. I could not row through. There was not more than a couple of inches of water. The lake is on the same level as the Illinois River. When there was only two inches of water in the lake, I could not say how
 1738 much water there would be on the rock or the piling. I pushed my boat through before and since 1900. The difference between before 1900 and three years ago is probably three feet.

I said the fish were killed by the Sanitary District's
 1739 water. I think the water dirtier this season than it ever was before; I don't think the proper amount of water necessary to dilute it is sent down. It is my
 1740 guess.

We conclude every time the river falls they are shutting off the flow of water. The fish died in July. I think the water dirtier, it was dirtier than it was before 1900.

The first time they turned the water in it killed all the
 1741 fish in the net. I do not know that the water since
 1900 has been purer and freer from contamination than
 it was before.

1742 There is no exact stage of water that corresponds with
 the same period year after year. July may be a high
 month one year and a low month another. The low
 water month of one year is changing and varying. The
 only way of getting at the stage of water in the Illinois
 River is by taking the very lowest stages and compar-
 ing them with the present; taking the two lowest stages
 of water before and since. In order to make a fair com-
 parison you have got to take corresponding stages of
 1743 water, low water before 1900 and since 1900. I have
 known the river to be high in January, February, March,
 April and every month of the year.

I am a tenant of the La Salle County Carbon Coal
 Company. I have a piece of ground rented from them.

1744 B. W. GOSTOMSKI, a witness for the plaintiff, being
 sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is B. W. Gostomski, I have lived at La'Salle
 for 26 years. Forty-two years of age. My business is a
 butcher. Have a slaughter house located south of the
 Illinois River, half a mile west of the Shippingsport
 1745 bridge, about a mile from the bridge that crosses Mc-
 Cormick's slough.

I knew Saw Waugh. I remember the land he farmed.
 I don't know the section that it was on. You showed
 me a map over in the office. The land you showed me on
 1746 the map is the land I refer to. I was on the land from
 1893 until 1898. I was on in December and January, we

had cattle on there. Some months we had 25 and some months 80 feeding on the corn stalks.

1747 The land was planted to corn. I don't know the number of acres. We let the cattle run there six weeks or two months. I have never farmed the land myself. The
1748 land was dry at that time.

Cross-Examination by Mr. Chipperfield.

I made the arrangement with Waugh. He got five cents a head. He had some cattle and horses there, quite
1749 a few. We generally had about 25 or 30 head of cattle there, not 80. They were fat cattle bought on the market. We put them in there and used them as needed. Whenever we had to kill one we would take it out. The cattle would be out in January.

1750 NOAH MOSTOLLER, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. Butters.

My name is Noah Mostoller, 69 years of age, live south
1751 of La Salle and have lived there since the summer of 1891.

I knew Mr. Waugh. I worked for Waugh on this land
1752 that you call my attention to west and south of the river. I worked there in 1891, went there in July, and
1753 stayed until the spring following. I have continued to work there ever since.

I have been over all this bottom land in Sections 21,
1754 22 and 23, between 1891 and 1903. Since that time I have not paid much attention to the bottom lands at all. I did different kinds of work there, cutting timber, cutting it for the mines, husking corn, cutting brush and so forth.

A few years ago they raised corn all over the bottoms.
 1755 Not very much but several chunks of timber in there.

I do not think there was any corn raised on the bottoms
 in 1892; I cannot hardly tell because it has been such
 1756 a long time; 1894 they had a good fair crop in corn.
 The next year the corn was fair. Prior to 1900, I used
 1757 to get some corn out of there that was pretty fair.

I husked there every year from 1891 to 1903 with the
 exception of two years. The land seemed to be all right
 during the winter, I cannot remember whether there was
 1758 any water on it. The water used to come in the spring.
 I never knew it to come in as much as I could remember
 during the winter.

After 1903, I never touched any corn there. Since
 1759 1903 not very good crops.

I lived over the bluff from the land. I could see down
 on the bottoms if I went some distance. Not near the
 crop this year that there used to be before 1900. Used
 1760 to husk 60 bushels a day. Used to be able to pull out
 1761 30 bushels of corn to the load.

Cross-Examination by Mr. Chipperfield.

1762 I live on Mrs. Waugh's land at the present time. I
 1763 was never around La Salle before 1891. For 18 years
 I never was in the bottoms here through the spring of
 the year, but I was here usually until March. I husked
 1764 corn in the fall. Besides husking corn I cut out cap
 pieces. I worked pretty near all over the piece the com-
 1765 pany is supposed to own. There was some very good
 1766 corn raised there during that time. I cannot say what
 it would go to the acre, I never measured it. It would be
 only guess work.

1767 Between the McCormick slough and the Illinois River
 from 1891 to 1903, I could not say how many acres of

corn I saw there. I cut off lots of timber, it was found in
1768 two different bunches. The timber was located pretty
well in the middle of the land I worked on.

1769 1900 and 1901, there was a nice crop there. I think
they were good.

Recess taken until 1:30 P. M.

1770 November 19, 1912, 1:30 P. M.

Court met pursuant to recess.

OWEN O'KEEFE, a witness for the plaintiff, being sworn,
testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Owen O'Keefe. I live in Peru Township,
am 54 years of age and have resided there since 1890.

I worked on a part of Section 21. I lived about half
1771 a mile south. Waugh's residence was on higher ground.
1772 The land which lies south and west of the Illinois River
and east of the McCormick slough is where I worked.

I worked there in 1891 and 1894; worked 60 acres. I
1773 used it for raising corn. I raised a good crop in 1891.
1774 Most of it ran about 75 bushels. After husking have
1775 seen stock turned in there.

1892 was a very wet year. A little was plowed in the
spring but nothing raised. In 1893, I did not farm the
land, but corn was raised there. In 1894 got a corn
1776 crop, I think about 45 acres. It went 75 bushels to the
acre. After husking, stock ran on the land. In 1895,
1777 there was a full crop of good corn.

1778 In 1896 I farmed the land across the road from
Waugh's land. That year it was in corn, a good crop;
the same in 1897, the same in 1898 and also in 1899. The
1779 corn ran 70 bushels to the acre.

1780 In 1900, all of the land was put in corn. There was a good crop. In 1901, all of the land was put in corn and they raised a good crop. 1902, no crops were raised in the bottoms. 1903, there was not much corn raised in there, probably a third of it.

1781 I saw the land yesterday. This year probably a third of it in crop. I drove through the land two or three weeks ago. The corn is in pretty fair condition, what there is of it. I saw some of it that was pretty fair corn. I examined it in one place.

I am acquainted in a general way with the flow of the Illinois River prior to the year 1902, and since 1890.

1782 Have been acquainted with it since 1902, down to the present time. I observed that the water is higher since,

1783 always higher; not able to get on the land as early as they used to. There is no difference between water conditions in the fall than there was from the years 1891 to 1902.

1784 I was acquainted with the land that lies west of the Illinois Central and south and east of the Illinois River; also acquainted with the land that lies east of the Illinois Central and west of the Big Vermillion. Never farmed any of it. It was farmed during those years from 1876 to 1885.

Mr. O'CONOR: Take the land now that lies west of the Illinois Central right of way and south and east?

A. Yes, sir.

Q. Of the Illinois River, how long were you acquainted with that land? A. Nine years.

1785 The COURT: What nine years are you inquiring for?

A. From 1876 until 1885.

The COURT: Well, I think that is pretty remote. I think if they object to it I will sustain the objection.

Mr. CHIPERFIELD: They have gone into it in connection with this land.

Mr. O'CONOR: No.

Mr. CHIPERFIELD: Oh, yes, you have.

Mr. O'CONOR: In connection with this land?

Mr. CHIPERFIELD: Section 23, and as long as he has expressed his opinion I don't think I would like it to go out to be left unexplained.

1786 Mr. O'CONOR: To what use was that land put during those years, Mr. O'Keefe?

They were raising full crops there except the two years, 1876 and 1881. In 1876 I think about half a crop and in 1881 there was a good crop raised but did not get time to pick it; the flood came along and they lost it.

I was acquainted with the land that lies east of the Illinois Central Railroad during those years. They
1787 raised the same character of crops with the exceptions that I have already noted.

Cross-Examination by Mr. Chiperfield.

From 1876 to 1885 I lived across the river in La Salle
1788-9 Township, right alongside of these lands, right where the Big Vermillion runs into the Illinois River, about
1790 half a mile from the lands east of the Illinois Central Railroad. I lived right where the Big Vermillion empties into the Illinois.

During that time there was high water there. My house stood on the same level as the lands. It flooded
1791 my house and put the fire out. The bottom lands were
1792 flooded at the same time. I have never seen the water as high as it was on the 18th of February, 1883, during
1793 those nine years. I don't know whether the water the last 15 years has been as high. I moved out in 1885 into Dayton Township and moved back to Peru in 1890.

1794 I testified in 1908.

Q. I will ask you if this question was not asked by

Mr. Wiley at that time, speaking of your house: "How long did it stay in that condition?" to which you made answer, "In December, 1908, we were out of the house just a week, from Sunday until Sunday." A. We might be out of the house. I don't remember whether I so answered but we were out of the house a number of days, maybe a week.

1795 Q. Then was the question asked you, "The high water was up to your house during that time?" to which you answered, "No, it was not, it went down Thursday or Friday, it went down." A. Somewhere along there.

Q. Then was this question asked you, "When did it come in?" and you answered "On Saturday evening." A. On Saturday some time.

Somewhere along there, I don't remember that exactly; it was in there a few days. Of course we did not go back in the house right away after it went down, had to wait a day. I cannot tell whether the water in 1902 got as high as it did in 1883.

1796 Q. Then was this question asked you, "How was its height as compared that year that you were flooded out, what was the condition?" Was that question asked you? A. The condition, I don't remember.

Q. Was this question asked you, "What was the condition of the height of the water that rose in the river those two years as compared with 1883?" To which you made the reply, "It has never—it must have been three or four feet higher in 1883 than ever I have seen it?" A. Yes.

1797 Q. Then was this question asked you: "It never since then has been as high as you saw it in 1883?" To which you made the answer, "No, I don't think it ever was." Did you make that answer? A. I presume I did say also it was not in La Salle Township.

I don't know how much of the lands east of the Illinois

River were farmed in any year before 1900. I don't know anything about it only from 1876 to 1880. Between those years it was all farmed except those two years, 110 acres.

1798 Q. Why don't you know there is only about 70 odd acres in there? A. That is what they call it, 110 acres.

Q. I don't care what they call it, don't you know there is only 70 odd acres in there? A. It was called 110 acres.

I never farmed the land any time. There was a corn crib on the south side of it. The C. B. & Q. was not there
1799 then. The "Q" road runs through there now. The place
1800 where the crib stood was higher than where my house
1801 stood. The piece west of the Illinois River between 1876 and '77 was farmed by Frank Canfeen. I had nothing to do with it. They called it 85 acres.

Q. Why don't you know there is more than 150 acres in there? A. They called it 85 acres then.

I farmed some of the Waugh land right north and a little west of the Waugh house, 60 acres one year, 1892.
1802 I tried to farm it and could not, that was the flood year.

I don't remember in the Brannan case that I gave testimony to the effect that there was no better corn land on the Illinois bottoms than the Brannan land; I don't remember saying that the Brannan land averages about 60 bushels to the acre.

Q. I will ask you if Mr. Duncan asked you this question during that trial: "During the seven years when you say the crops were not affected by water, you think there were about how many bushels per acre?" To which you made answer, "About 60 bushels, I think?" A. Yes, probably, I meant that for the average of those seven years.

1803 In 1898, the flood damaged a part of that land. The damage was along the latter part of June after the crop was in. I do not think they took a third off. The water

stood on the land in low places for several days. I am speaking of the Waugh land.

1804 I could not say how much difference in elevation there is between the highest and lowest piece of the Waugh land. I don't think there is any place where the difference is as much as five feet.

1805 The flood in 1898 probably spoiled about 100 acres. I don't know how many acres were in crop on the Waugh land except what I have heard. I think there was years 1806 when there was between three and four hundred acres, along from 1893 to 1897.

1807 The COURT: I want to strike from the record this witness' testimony respecting the crops on this land prior to the year 1885. It is my desire to confine the testimony, so far as possible, on both sides, to the first fifteen years next preceding the time when the Sanitary District water was turned into the valley. I think that fifteen years prior to that and twelve years hence then is a sufficient range of time for both parties to present their proofs, and it is not necessary to go back of that. Now, I have made this motion of exclusion upon my own motion and it may be that counsel on both sides feel like objecting to it, and excepting, and I will not call upon them to state their objections or exceptions, but I will concede each of them an objection and exception to my ruling in this instance, and to what I have said.

WILLIAM BRANNAN, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

1808 My name is William Brannan, I live in La Salle since 1869. I farmed a part of the land on Section 21 south of the river. I mean the land that lies south and west of the

Illinois River and east of the McCormick Slough. This 1809 is the fourth year I have been farming it; started in 1909. Prior to 1909 I never farmed that piece of land or worked on it. In 1909 had about 30 acres rented.

OWEN O'KEEFE, a witness for the plaintiff, being recalled for further cross-examination by Mr. Chipperfield, testifies as follows:

Q. During the years 1891, 1893 and 1894, what rent did you pay for this land? A. Two-fifths. Paid it to 1810 Waugh and Braun. They sub-rented to me.

WILLIAM BRANNAN, a witness for the plaintiff, recalled for further examination, testified as follows:

Direct Examination Continued by Mr. O'Connor.

It was located in the northwest part of the section. I rented more but I did not get more in. I rented a couple 1811 of hundred acres. Besides myself there were others that tried to farm the land. Got on the land that year June 20th. There was water on a lot of it. The land is not uniform although in places it might be six inches or a foot higher than others. I intended to put in about 100 1812 acres and got in 30. I went in over the road, it was awful wet. The road is on the level with the land. The road had been graded up. When I got on the land that year, the land that we put in crop was in good shape to work. 1813 From the 20th of June on it was dry until fall. Raised good corn but the water rose on it in October. The corn had matured. We got in on the ice and husked it about the month of November. The corn that we got on top was 1814 dried out but what we got in and gathered after the water went down on the ice, it rotted, was water-soaked.

Mr. Cosgrove had 20 acres and Mr. Dierce had 20 acres and two other men, 10 or 20 acres apiece, I don't know their names. Aside from that none of the land was cropped. The pieces did not join, scattered.

- 1815 The water came up the latter part of the month. In the year 1910, we worked a part of the land, started to plant in June and got in 80 or 90 acres. Mr. Dierce had 20 acres and Mr. Cosgrove had 20 or 25 acres. They did not join. There were three others there who were farming but I don't remember their names. They had 10 or 20
1816 acres apiece. We got in on the same road. The land was dry that fall when we husked. The corn, a great deal of it, was soft. We sold and shipped it but it did not grade. I don't know why it did not grade. There was a good deal of milk in the corn when we husked it. Some
1817 of it had matured and some of it had not.

- 1911, we started to plant the 5th of May, had a dry spring and the roads were dry and good. Got in 180 or 190 acres. The land all joins but the river at one end cuts it off and the slough cuts it off at the other end. We
1818 started husking on the 5th of October. It was dry. The condition of the corn was very good. The corn was good but the water raised on it. The water started to come up in September. In November and October most of the corn had matured and was dry but there was so much of the corn that had been in the moist that we put it all in together and spoiled it. The ground was wet at that time.
1819 When the water came up we cut up the corn stalks and piled them together and made a kind of corduroy road. In the beginning we took out large loads and later on when it got so soft we just made wire cribs and piled the corn up any way we could. We had six horses hitched on some of the wagons.

The water continued to rise and we lost quite a bit of

the corn. We put up two temporary cribs, one near the
 1820 river and the other near the cross road. We couldn't get
 out with the corn. We got the corn out after it froze, with
 sleighs and wagons on the ice. The corn that we got in
 the cribs that was not wet was good corn. What was
 husked in the wet weather blackened the corn that was put
 1821 in the cribs. We shipped it to Chicago.

This year we got on the land the first day of June. We
 took the feed and tools in with the boat and the horses
 and mules we got in through the mud with the wagons.
 1822 The land was all muddy, you could not get in with a load.
 The horses and mules got mired.

Put in 160 or 170 acres this year. A good deal of the
 corn has got milk in it, soft, not matured. We are husking
 it at the present time.

Cross-Examination by Mr. Chipfield.

During the time I have been working this land I have
 become familiar with the surface of it. The land is pretty
 level. Probably the difference in elevation between the
 1823 high and low parts would be a foot to a foot and a half.
 During the summer months the river would be five or six
 feet below the bank along where there is a grove of trees.
 1824 When the water is at the lowest level it is probably ten
 feet below the level of the bank.

With the exception of the one time which I have told
 you the water would stay down until the latter part of
 October. Some parts of the ground might be a little wet
 the latter part or middle of June. By July 1st, the land
 is well out of water and the river would fall down and
 stand there and we would go on cultivating.

1825 I don't remember exactly how much corn we got in 1900,
 I think two or three hundred bushels. When we got in
 to husk the water rose and we could not get the rest. Be-

fore the water rose it looked as if it would yield 90 bushels to the acre.

1909 was a wet season, a wet spring and a wet fall. I don't know that the rainfall was 40 inches that year. I have no means of knowing about it. I don't know that 23 1826 inches of rain fell between the first of April and the first of October in 1908. I don't remember what we did with the corn.

1827 In 1909 Cosgrove and Dierce and several others had pieces of corn in there. Altogether there was something better than 100 acres of corn.

1910 started to plant early and including my corn we got in about 150 acres. I think I got about 800 bushels off. There was nothing to prevent my getting a crop off in 1828 1910. The corn ought to run between 50 and 60 bushels 1829 to the acre. I am not positive but I think I got 14 cents at Chicago. I rented it on shares, two-fifths. I delivered the landlord's share to him.

I think I shipped seven cars of shelled corn, that year, running about 700 bushels to the car. I shipped the land- 1830 lord's share, too. That would be about 4,900 bushels of shelled corn. Got $44\frac{1}{2}$ cents for it.

1911, got in 180 or 190 acres. Started in the 5th of May. The corn was good that year. The water commenced to come up in September. That year I got 7,800 and some odd bushels of corn. I shipped it and got 56 and 58 cents for it; 7,800 bushels was all of the corn, including the 1831 landlord's share. I paid two-fifths rent that year.

This year got in 160 or 170 acres. It was not good corn. I don't know what date we started to put it in, probably the 5th or 6th of June. The corn ran about 60 bushels. The part that was planted first, the first week or two, would dry if it was kept separate, the corn planted after that is soft. The corn is not dented. When you squeeze

it the milk will come out. That kind of corn in every one of the fields. The corn planted the first two weeks has turned yellow and matured. We are husking it. I am putting the corn which I now say is milky in the crib with the rest of the corn. The crib is on the Dierce farm adjoining it on the south. One is a double crib. They are about 64 feet long and there is a single crib 64 feet long and seven or eight feet wide, 10 or 12 feet high. We have 1833 all of those cribs filled now about four or five feet high.

I think we have got about 3,000 bushels of corn in there 1834 at the present time. I think they have husked between 50 and 60 acres. There is 100 or so yet to husk. The corn won't grade. I don't suppose you could get over 25 cents a bushel for it. New corn is worth 40 cents. Alto- 1835 gether this field would probably yield nine or ten thousand bushels.

Cosgrove has corn in there, about 25 acres, and his corn will yield about the same as mine; will be something like 1,500 bushels more. Dierce has corn in there, about 15 1836 acres. His is poorer corn, runs about 35 or 40 bushels, and that would be about 600 more. There is a Polish fellow has got 10 or 15 acres, which will run about 35 to 40 bushels, making about 600 more. No one else has any more corn in there this year.

Q. So that would make 10,000 or 12,000 bushels, such as it is, on that land? A. Yes, sir.

Pay two-fifths rent to the plaintiff. When this land is out of water it is quite fertile; seems to drain itself quite 1837 rapidly when the river goes down. Inside of a week or so after the water goes down you can plow that field close to the water's edge as the water recedes.

Did not know the land before 1909. Have had experience in raising millet on other bottoms similarly situated to these. It grows good, a couple of tons to the acre.

1838 Have had experience with the raising of other crops on this kind of land. Raised sugar cane. It takes about 60 days to mature the first crop and the second crop takes about 90 days. It is a good forage food; the stock do nicely on it. The two crops will go three or four tons to the acre.

Q. There was a question I wanted to ask you. Now this land you say lies practically level with the exception that there is some places it may be a foot higher than the others? A. Yes, sir.

Q. Well, isn't it true that when the water is off this land so you can plow one part that it is off so you can plow practically the entire part of the cultivated portion? A. Well, yes.

1839 Q. Now, at low water stage, during the years that you farmed it, when the water was right at its lowest, about how far below the general level of this land would it be? I mean by that, Mr. Brannan, when the water was down just as far as it would get, the lowest you knew it at any time during the season, about how far would it be below the general level of this land? A. Oh, seven feet.

Re-direct Examination by Mr. O'Connor.

Paying five cents per bushel for husking when I furnished the team and ten cents when they furnished the team.

1840 *Re-cross Examination by Mr. Chipperfield.*

Have no lease for the land. Got it as long as I want it. I notified the superintendent that I would not work it any more.

ABRAHAM VORHEES, a witness for the plaintiff, being sworn testifies as follows:

Direct Examination by Mr. Butters.

My name is Abraham Vorhees, I live south of La Salle about two miles, within a stone's throw of the Big Vermillion River at the bridge crossing to Deer Park on the west side of the river.

- 1841 I know the southeast quarter of Section 23 and southwest quarter of Section 23 for 37 years and continuously since 1890. On the northeast quarter of the southeast quarter of Section 23 from 1890 to 1900, they raised corn when they raised anything; raised it every year when the
1842 water did not interfere or flood it. 1892 was a wet year, with nothing raised on the land; with that exception I think there were nine years continuously of corn. The average was good.
- 1842 I worked on the land every day in the summer time. We had good average crops.
- 1844 The land on the south side of the C. B. & Q. and on the southwest side of the C. B. & Q., in the same quarter section, they raised the same number and kinds of crops as on the other piece.

Mr. CHIFERFIELD: I just want to object for the purpose of the record to any portion that is south of the north $4\frac{1}{2}$ acres of the south half of the southeast quarter of Section 23.

Objection sustained.

- 1846 On that land the quality of the corn was good; two-thirds of it would mature. There was a part of it not matured along the central track, containing several acres. On the west side of the Central Railroad I saw that land but not intimately with the exception of the one year I

was there and did work on it. That was 1887 I believe. Between 1891 and 1900 I was not on it. I saw it but I could not say anything definite about it.

Between 1902 and the present time on the land east of the Central right-of-way, and east of the C. B. & Q. Railroad track, with the exception of 1902, we had pretty 1848 fair crops as far as I can understand. In 1902, we had nothing, and then two years we had a partial flood. Then we had a good season and since then we have had pretty fair crops on that one part.

They used the land between the C. B. & Q. tracks and the Illinois Central tracks during the last seven years for raising corn. They raised fair corn on it off the part 1849 which they did get any from. Part of it they could not raise any on. They raised corn on the 20 acres parallel with the "Q" tracks, south of the "Q" tracks. The corn was pretty fair up at this end towards my place, around the Vermillion.

On the north and east side of the "Q" track in the northeast quarter of the southwest quarter, during the past seven years, they had corn on that that was good. There is a swale or gully running through there, possibly a couple of acres that is easily flooded, consequently the corn would be poor in through there, but the higher land they had good crops of corn off there the last year and this year also. All of it is in crop this year. That 30 1850 acres is good. That is the piece east of the railroad. This year the land on the west side of the C. B. & Q. and east of the Central is practically of no account. There is possibly 10 acres of corn matured on the land that was planted this year.

Q. Now, then, Mr. Vorhees, are you familiar with what was the fair cash market value of that farm land in the vicinity of La Salle during the year 1900, we will say, dur-

ing the month of January, 1900? A. Would I be allowed
1851 to answer that by saying what I would have given for it?

Q. No, I asked you the question whether you were familiar with the market price, the fair cash market value of farming lands in the vicinity generally speaking? A. Previous to 1890?

Q. 1900? A. Well, previous to 1900?

The COURT: In January, 1900, is what he is asking you about.

A. All right.

Q. You may answer that yes or no. The question is whether you have an opinion or know the market value of farm lands in that community there at that time? A. My opinion, yes, sir.

1852 Q. Now then have you an opinion as to what was the fair cash market value of the land to which your attention has been called in Section 23, on the 17th day of January, 1900, before the Sanitary District waters were turned into the Illinois Valley? A. Yes.

Q. Now I will ask you what in your opinoin was the fair cash market value of those lands per acre at that time?

Mr. CHIPERFIELD: We object to it, no proper foundation has been laid or established.

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Anything over \$100 would be reasonable.

Q. Now I will ask you if you have an opinion as to what would be the fair cash market value of the lands, the same lands upon which no crop has been raised since 1900, and to which your attention has been called in that Section 23, since January, I mean on January 17, 1900, after the wa-
1853 ter was turned into the Illinois Valley from the Sanitary District?

Mr. CHIPERFIELD: Same objection.

Objection overruled; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. My opinion at the present time?

Q. Yes. The question I asked was how much per acre would those lands have been worth on the 17th day of January, 1900, after the water was turned in from the 1854 Sanitary District into the Illinois River? A. \$100 at least.

Q. No, after the water was turned in, after January 17th, or around January 17th, taking into consideration what you know of these lands since? A. Did I not answer that by saying \$100 or over?

Q. Mr. Vorhees, you were asked what in your opinion was the fair cash market value of that land after they turned the water in on January 1, 1900, taking into consideration the conditions of that land as you have observed them to be from that time down to the present, 1855 how much was its fair cash market value at that time under those circumstances? A. A great deal of it is worth nothing.

Q. Now, then, that part of those lands upon which a crop has been raised during those years, what in your opinion was the fair cash market value of that portion on January 17, 1900, taking into consideration the condition since that time? A. \$100.

1856 I have no opinion what the land is worth now.

Cross-Examination by Mr. Chiperfield.

My age is 53, I have lived in the vicinity of these lands since 1874. I lived between the C. B. & Q. switch and the 1857 road. Where my house is located it is not quite a bit higher than on the bottom. The basement level of my

house is not any higher than the bottoms. In 1902, there was 18 inches of water in the house. That was extreme high water. When ordinarily the bottom land is flooded my house is not flooded to any great extent. The highest 1858 ground in the bottoms is on the same level as the high ground on which my house is situated. The house is on higher ground than the lowest bottom lands, possibly three feet.

1859 I am a coal miner by occupation. I work for the plaintiff. The land where my house stands I lease from the company. I am both employed by the company and a tenant of the company since 1874. I do not know much about the crops west of the Illinois Central Railroad. I know that they have had good crops for I saw the prod-

1860 uct when it was cribbed. They cribbed it alongside of the road. I haven't intimate knowledge of all the crops but some of the crops. I have considerable knowledge of the land which lies east of the Illinois Central Railroad and north of the switch and on both sides of the C. B. & 1861 Q. Crops have been raised there. I have had a garden on part of it. There was 69/100ths of an acre. Raised all things constituting a garden, cabbage, carrots, beets, onions, lettuce, sweet corn. All these products grow finely there with the exception when they are flooded. I have good garden truck there, except when they are flooded.

I lease three and 69/100ths acres of ground. Three acres is in corn and 69/100ths acres in garden. The corn is right in that little point there north of the main line. 1863 I have been raising corn eleven years this summer. Raise corn all the time with the exception of two seasons I have got a fair crop of corn off those three acres; average something about 35 bushels to the acre and matured nearly every year. I lost it in 1902 and in 1904. In 1904 the damage was done by water standing around the roots.

1864 All the land in there is not adapted for garden. It is too low. Thirty acres on the north side would be adapted to gardening if it was not overflowed. This piece lying north of the C. B. & Q. is the tract I mean. That is what
 1865 they call the 30 acres. It is the highest ground in the entire bottoms there with the exception of the swale that runs from the Vermillion River. On the south side of the "Q" the ground is, with the exception I have stated of 20 acres along the "Q" track, almost worthless because it is so low that the back water in the river when the river rises a little comes in there, and while you cannot see the water very often on the top of the surface of the ground, it permeates the ground so close to the surface that the corn will not mature. That is the land that Mr. Charley had.

1866 I know that Mr. Charley got about 45 bushels of corn to the acre last year. He had about 80 acres altogether. I don't know how much corn he raised.

During the years since 1900, on the land south of the
 1867 C. B. and Q. with the exception of two years there has been a partial crop raised. The land both north and
 1868 south of the railroad since 1900, was farmed by a man named Schepp, who worked it two seasons, and Mr. Charley. I always understood there was 90 acres in there.
 1869 I do not know that it is somewhere between 75 and 80 acres in the two tracts.

Thirty acres on the north is high land and on the south side there is 20 acres of land which stands high. That I consider good land, the balance of it is low. I think the land might possibly have been worth \$125 per acre before
 1870 1900. I don't own any real estate, never bought any or sold any.

I know of some land being sold similar in character in that vicinity. A man named Evans from La Salle sold

it to a lady named Vesper. I cannot tell just how long ago it was or just how much was sold. Possibly would be
 1871 about a 38-acre piece. Sold in February, 1902. It is a little lower than this land, no buildings on it. I don't know what was paid for it. I have heard it was \$76 an acre. That was two years after the Sanitary District
 1872 was opened. I never thought of that sale in fixing the value of this land at \$100. My statement as to what it was worth was based upon the products you could get on there from the amount that would be required on your part to produce certain results; in other words a corn raising proposition. I think it could be used profitably in that way so as to make a return on that amount of money.

I don't know of any land in all La Salle County before 1900, selling for \$100, unimproved without buildings. From information I have I guess it is true that land had been generally around \$50 to \$75, until the next year or two when it commenced to advance, and that \$100 was considered a very high value for even the best of La Salle County land in that vicinity at that time.

I have worked in the coal mine under this land 33 years; worked in the third vein; it was three feet six inches thick, 440 feet below the surface. There is a middle vein on the premises $4\frac{1}{2}$ feet thick located 160 feet higher up than the third vein.

1874 Among coal miners it is figured that there is about 1,000 tons of coal for every foot of thickness in a vein in an acre. There would be about 7,000 tons of coal in each of these acres of ground. I considered the land as a coal
 1875 proposition to mine coal in there. I understand that in the fee simple ownership of land is included everything as they say from the heavens above to the center of the earth. This coal is down there all right. That land with 7,000 tons of coal in each and every acre of it as a coal

mining proposition in 1900, would have a considerable value. I think that the value of the coal, taking into consideration the value of the coal now, that the value of the surface, taking the land in its entirety as a coal mining proposition, would be worth \$75 to \$100 an acre at that 1876 time.

1877 I would say that the extreme difference of elevation in this land is about six feet between the highest and lowest.

I have known the Illinois River a great many years. The 1878 water is not at its lowest stage today. The Vermillion and Illinois stand on substantially the same level. The Vermillion is within 300 yards of the Illinois River.

1879 There is from two to six feet of water in the Vermillion. Previous to the drainage it used to be in the summer, it was almost dry land. The surface of the country about the Vermillion has been changed by stripping off the timber, generally speaking, all over the state. There has been a great change in the country, all over the country, by the use of tile draining. The water that used to stay in the land is carried off in the tile drain or run off in the tile drain to the stream.

1880 I do not know that streams entirely disconnected with the Illinois River, by reason of the stripping off of that timber and by the use of the tile system, stand higher the year around now. My impression is not otherwise but I don't know. I don't have any information on the subject. As I say, we have sometimes from three to as much as seven feet, but seven feet is unusual. We have three and four feet of water in the Vermillion in the summer time, in the dry time, and as I said by comparison before we had almost no water in it previous to that time.

1881 We have quite an amount going down sometimes but no great torrent or anything like that. I have not seen that

overflowed from the Vermillion except back water from the Illinois. The two rivers do not necessarily rise and fall together. I saw the Illinois River on a stand and I saw the Vermillion flow strong and float the ice clean over to Rockwell when the Illinois River was perfectly solid then. I account for that by the rainfall in the water shed 1882 of the Vermillion that did not apply to the Illinois River.

This land would be possibly five or six feet above the Illinois River at its very lowest stage, or the Vermillion. The Vermillion is not a very deep stream. It is 280 feet wide when flowing very full.

From the number 1 mine there is a waste bank on this piece of land. They are dumping rock down on that piece of land. The dump is located pretty near over to the bluff, the Central track; possibly it is 75 feet high. It would cover maybe two acres possibly, pretty near, at this time. The fire clay dissolves and then spreads out a little distance and washes out over the land from this dump. It is possibly carried out 20 feet. I never saw it more than that. There are great rocks roll down. The clay dissolves. They are constantly adding to this dump, and it is growing all the time. That comes out from all over the mines. This dump stands on the 90-acre piece I spoke about, stands close to the bluff not far from the bluff.

1884-5 DEPOSITION OF E. L. COOLEY, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Donnell.

1886 My name is E. L. Cooley. I am a civil engineer employed by the Sanitary District of Chicago as one of its assistant engineers; have been in its employ continuously since May, 1894.

Upon January 17, 1900, with two or three assistants, I personally attended to the lowering of the Bear Trap Dam at Lockport. To some extent since that time I have been performing duties as assistant engineer in regard to the flow of the water over the dam at Lockport.

1887 A record has been kept of the flow of the water over the dam or through the gates. The flow has been estimated by the application of a certain formulae I have selected for that purpose. Before and after the 17th of 1889 January, 1900, I personally operated the Bear Trap Dam and the machinery controlling the same. I designed 1890 a considerable portion and got it into condition to operate at the finish. The act performed by the person or persons in charge for the purpose of raising or lowering the dam is they simply turn a wheel for both purposes; one way in one case and the other way in the other. The power that operates the dam is practically the head water from the channel. The gates are raised or lowered north 1891 of the dam by hand gears. There are counter weights 1892 on these gates. The gates move up and down like a window frame and there is a ratchet lever at each end usually operated by one man at each end.

The basin which lies immediately back of the Bear Trap Dam is called the tail-race, sometimes called the windage basin. At its extremity it is about 500 feet wide and 35.1 feet deep. It only preserves the width of 500 feet for a little ways north. The regular channel terminates in the windage basin. Immediately under the Bear Trap Dam 1893 there is a chamber into which the water can be admitted or discharged. Water can be admitted from the canal and discharged into the tail-race. The tail-race runs south from the Bear Trap Dam for a short distance; it runs parallel with the river channel from the Bear Trap Dam. They join about six or eight hundred feet below the dam.

The Bear Trap Dam rests on a concrete structure. From the bottom of the windage basin to the top of this 1894 concrete structure it is about 18 feet. The surface of the water when the Bear Trap Dam is closed and the windage basin is full varies within the level of the water 1895 in Lake Michigan, varies several feet. The highest elevation I cannot give without a point of reference being given to me. The elevation of the masonry below the dam is minus 13, Chicago city datum, and the bottom is minus 30, also Chicago city datum. With the same point of ref- 1896 erence the height of the water when it is at its highest in the windage basin depends on the level of Lake Michigan. I don't distinctly recall the highest I ever observed it. I have known it to be above Chicago city datum on rare occasions. By Chicago city datum I mean what happened to coincide with the low water of 1847 as indicated on the Milwaukee gauge.

Since January 17, 1900, there has been no dam between the windage basin and Lake Michigan where the river empties into the Chicago.

1897 Immediately west of the Bear Trap Dam and beneath the dam there was an excavation made in the course of the Sanitary District work. The excavation is the so-called tail-race. They dug two or three feet through the rock to a width of about 400 or 500 feet. The distance from the Bear Trap Dam south to the bridge known as the Ninth street bridge, west of the City of Lockport, is about 1,700 feet, as I remember. I think it was about one mile from the Ninth street bridge down to the Sixteenth street bridge across the channel.

My recollection is not distinct as to the width of the main tail-race from the Bear Trap Dam to the Sixteenth street bridge. I think it was about 500 feet. I don't think it was 600 feet. I don't know how many bridges

there are over the channel at Sixteenth street. From the 1898 controlling works to Sixteenth street there was a levee constructed by the defendant on the east bank of the channel. It was constructed before the water was let 1899 in. I cannot state the height of the levee. It is composed mostly of earth; there may be some rock in it, I couldn't testify as to that fact.

The Desplaines River enters the main tail-race six or eight hundred feet below the Bear Trap Dam on the west 1900 side of the tail-race. I am only familiar in a general way with the river diversion channel through the townships of Lockport, DuPage and Lemont.

Since January 17, 1900, the controlling works have been operated under the direction of the chief engineer. Incidentally at times, I have had something to do with it under his direction. I had nothing to do with it in con- 1901 nection with the quantity of the flow. I sometimes transmitted orders concerning the flow. The transmission of orders is not limited to one man.

The water was turned in about 11:15 A. M. on January 1902 17, 1900. About a depth of two feet went over the crest of the dam at that time.

The COURT: We will suspend here.

Whereupon the further hearing of the above entitled matter was adjourned to nine o'clock Wednesday, November 20, 1912.

1903

November 20, 1912, 9:00 A. M.

Court met pursuant to adjournment.

W. H. IRWIN, a witness for the plaintiff, recalled for further examination, testifies as follows:

Cross-Examination continued by Mr. Chipperfield.

Q. I will ask you to look at a copy, this is not the original, bear in mind, it is a tracing which we have made of your exhibit which is numbered "13" in this case. Just glance at it a minute and satisfy yourself that it is a substantial copy of yours. A. As near as I can tell without comparing it is.

Q. Now, you gave the total number of acres in your computation as you gave them to us, you noted the tract which lies north and east of the Illinois River in section 21, as 69.24 acres if I remember correctly? A. Yes, sir.

Q. I am informed by you that you wish to change that total as there was an error in transcribing? A. There was 59.24 acres, the figures show as they are on the map.

Q. The figures are all right on the map, but in the
1904 computation there was an error of ten acres? A. Yes.

Q. Now in the tract which lies to the east of the Illinois Central Railroad, being the northeast quarter of the southeast quarter and the northwest quarter of the southwest quarter and $4\frac{1}{2}$ acres on the north side of the south half of the southwest quarter, all in Section 23, there is more than that included on your plat, and in the totals which you gave, being 39.62 acres, being the northwest quarter of the southeast quarter and 44.88 acres of Section 23, there is more than that included in the total acreage than the description which I have given, being the north half of Section 23, and the $4\frac{1}{2}$ acres off the north end of the south half, is there not? A. I believe the

north half of the southeast quarter of Section 23, $4\frac{1}{2}$ acres, yes, there is.

Q. All I want you to do is to deduct from those totals the amounts that should come out of the acreage, as being not included in the declaration in this case. A. I have made a computation of that.

Q. All right, sir, you may give it, if you please. A. I prefer to give it in this way.

Q. Any way you want. A. In the northeast quarter 1905 of the southeast quarter of section 23, the acreage owned by the Carbon Coal Company—

Q. Please leave out the word “owned.” A. The net acreage claimed by the Carbon Coal Company—

Q. Yes. A. —is 34.36 acres. In the northwest quarter of the southeast quarter the net acreage claimed by the Carbon Coal Company is 38.38 acres, north $4\frac{1}{2}$ acres of the south half of the southeast quarter, 4.5 acres.

Q. And have you got the whole thing figured up? A. No, but I can do it for you in a moment. 77.24 acres. These areas are exclusive of railroad rights-of-way.

Deposition of E. L. COOLEY, a witness recalled for the plaintiff, further testified as follows:

Direct Examination Continued by Mr. Butters.

1906 We got the gauges on the dam about two weeks after that. The purpose of the gauges was so that we would know when we moved the dam what the depth was over the dam. When the water stands at a depth of two feet over the dam the number of cubic feet was about 90,000 cubic feet. I carry the formulae that we use in my mind. We 1907 get daily reports of those gauge readings. They are in the files of the office of the Sanitary District of Chicago. 1908 They are not in my personal possession; they are in the

files of the office. I have no authority to produce them individually. Like all our records, they are in charge of the chief engineer, Isham Randolph. I have not been forbidden to produce them by any one. I have access to them when I want to consult them. I usually go where they are filed and look at them. I have access to the files. I cannot produce the records without the consent of the 1909 chief engineer. They are not directly in my custody. They are in the custody of a man who is not under my direction. The man who used to have charge of the room is gone now. I suppose the record clerk would have charge of those records now. He is employed under the direction of the chief engineer. His name is William Trinkaus.

If I desire from day to day to know the quantity of water that flows over the dam at any day during the past five years, I have access to the records; whenever I wish to consult the records I go there and do it. I usually assume to go there without permission from any one when I have any business so to do. I am a sub-assistant engineer.

1910 I have visited the controlling works frequently during the last five years; sometimes once a day and laterally once a month at least. I was there every day when some work was going on as construction or repairs that involved the operation of the controlling works. During my various visits there I saw the dam. I saw the gates 1911 in operation, I mean raised frequently. The gates are not used very often, only incidentally for the purpose of 1912 passing water into the tail-race. I think I have seen four open about one foot each. There are seven gates. The seven gates are in condition to be opened if necessary.

I could not very well answer the question as to the greatest height of water I have seen passing over the

dam. Normally I would say four feet. There may have been
 1913 times when there has been temporarily a much greater
 flow. I have known the dam to be put down flat for some
 purpose for a few minutes. Aside from the times when
 I say it is put down flat, the flow varies according to the
 orders received from the chief engineer. I think the
 highest number of feet is four feet, that is four feet of
 1914 water. With four feet of water there would be passing
 over the dam, without stopping to figure it a little less
 than 300,000 cubic feet. The formulae serves our purpose,
 we regard it as competent.

1915 We have in the office a formulae. It is in a book which
 I can bring. There used to be a little paper with that
 formulae at the head. I don't know that I have got a
 1916 copy of it. I think the last copy I gave to Mr. Blakeslee.
 (Witness produced book.)

There were four sets of measurements made by differ-
 ent parties at various times which showed our formulae
 to be fairly satisfactory. The width of the opening in
 1917 which the Bear Trap Dam rests is 160 feet nominally.
 I think it is a couple of inches more. The elevation of
 the main tail-race beneath the dam where the water flows
 over the dam is minus 15. The main tail-race is minus 16.
 1918 The bottom of the windage basin is minus 30. At a
 distance of 75 feet from the foot of the dam, out
 in the bottom of the tail-race, the elevation is minus 16,
 a foot more than just below the dam. The bottom of the
 tail-race was made of a uniform elevation. It is not so
 now. It is considerably higher, about 14 feet higher than
 the windage basin.

In case where there is no flow when the water is at its
 1919 normal stage and the dam is raised, the water should
 then be at the level of Lake Michigan. The bottom of the
 tail-race always remains the same below the surface of

the water. The surface of the water varies all the way from two or three feet, something like that pending upon the condition of the flow. At its highest stage it never
 1920 gets very high because it goes swift there. In the neighborhood of three or four feet is about as deep as it gets. I mean the depth of the water in the tail-race. I should say four feet of water. I say that reservedly because I have no measurement. It is simply my impression. There is no occasion to measure the depth of the water at that point.

1921 One winter I thought I saw on one of my visits five feet going over the dam aside from the time when the dam was laid down flat. That was the winter that Mr. Jones was president. I don't remember the year. When we had about five feet there would be 350,000 cubic feet per
 1922 minute over the dam. That flow continued for a number of days during the winter; started in about Christmas time and kept up for several days during the winter. Might have been thirty or forty days, might have been two months. In some cases, on occasions of heavy rain-falls and floods in the valley of the Desplaines River in the vicinity of Chicago, there has been an increase of flow over the dam for a few hours to prevent the water going out into the lake. It lowered the water so that the water
 1923 ran that way instead of running out into the lake.

When the Bear Trap Dam is in operation so as to carry anywhere from 250,000 to 350,000 cubic feet per minute, there is a current in the Chicago River and it starts up at the head of the so-called break-water where the inner harbor terminates. The break-water is practically dug
 1924 out of the shore of the lake.

The earth section of the channel ceases and the rock section of the channel commences at Willow Springs. Between Willow Springs and Robey street the width of the

earth section top measurement is about 300 feet, but varies with the stage of the canal. Probably about 340 1925 feet when the height of the ground is plus 10 and the depth of the channel is minus 25. The slope of the bank is about one on two and the bottom width is approximately 200 feet. It varies some with the distance.

The greatest depth of the greatest depth of the rock channel between Willow Springs and Lockport, beneath or under the surface of the ground is probably thirty-five feet. No change in the design of the channel or the size of the channel between its connection with the Chicago River and the Bear Trap Dam as to width or depth since 1927 1900. The main channel is substantially the same. There has been no change in the openings or capacity of flow of either the Bear Trap Dam or the gates since January 17, 1900, except the completion of some little details.

Gauge readings are taken every half hour. The Chi- 1928-9 cago River is usually able to take care of any rains or floods due to the rain coming out of the north branch, without any change in the flow. I say there have been a number of times since the channel was opened when the water did not go out into the lake from the north branch.

1931 GUS THRAN, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

1932 My name is Gus Thran. I have resided in Peru since 1853. Have been digging coal at Cahill's. I live in the southwestern part of Peru about four blocks above the Rock Island bridge and west of the Illinois River bridge. It is higher up on the bluff.

Am acquainted with the river from 1890. I have seen 1933 it most every summer every week, once or twice, when I

would be fishing. I went fishing often during the summer months. I have fished from the river bridge down.

Prior to 1900, I was acquainted with the river. I would
 1934 be steamboating every year from 1872 in the spring of
 the year for a few months. I have done no steamboating
 1935 since 1890. The river has been higher since the Sanitary
 District water was turned in. I know by the piles which
 I used to tie my skiff to. Some of them would be on dry
 land before, while now they are three or four feet under
 water. The piles are located nearly one and a half miles
 below the Illinois River bridge at Peru. I think there
 would be a difference in the water there during low water.
 1936 The difference since then in the summer has been about
 four or five feet. The season I refer to now when they
 1937 are under water is low water.

Cross-Examination by Mr. Chipperfield.

Have done no steamboating since 1880. I was a deck
 1938 hand on a steamboat called the Beaver and the Joe
 Fleming. One year on one and another year on the
 1939 other. They were towing grain barges and ice barges.
 The steamer, that I speak of that the piles were used
 for the protection of would be about 200 feet long and
 1940 belonged to the Bowers'. They have not been in busi-
 ness since 1880. It was put in there in the seventies.
 1941 The piles were 30 or 40 feet out in the stream and
 closed up that much of the stream. They did not stand
 very high at the shore end but they would go higher out
 further. There are some standing 10 feet out of water
 today. At the shore they would stand four to seven
 feet. I guess there must have been 40 or 50 piles. Be-
 fore the drainage water came in they were against the
 shore.

I know there was a decided change in the Illinois River

when the Henry dam was closed in 1879. The piles were 1942 built in the seventies, but I couldn't state when. The time they were built they were four or five feet above low water, on the inside of them. There was some 20 1943 feet high before 1890. After 1900, they were four or 1944 five feet out of water.

1945-7 Q. You can wait after all of these questions I am about to ask to see if there is an objection before you make reply. Was the low water of the Illinois River—do you know what was the date of the closing of the Henry dam at Henry, Illinois? A. I couldn't tell you 1948 that. I know the Henry dam was in before 1879.

Mr. O'CONOR: Your Honor, I don't want any confusion in the record on this witness. My idea as to the ground covered in the testimony I thought was clear, but apparently counsel on the other side don't view it in the same way I do.

Mr. CHIPERFIELD: I don't believe we disagree about the date, Mr. O'Conor.

Mr. O'CONOR: You mean about the closing of the Henry dam.

Mr. CHIPERFIELD: Well, his idea is different from mine about that, but I believe I won't extend this examination, as conducted by you, any further than you intended to extend it. I am not putting it on that ground.

Q. Do you know what was the date of the closing of the Henry dam? A. No, sir.

Q. Now, I will ask you if the low water of the Illinois River was changed and altered after the closing of the Henry dam? A. Well, the Henry dam raised the river some, yes.

Q. How much? A. Well, I couldn't tell you that.

Q. I will ask you if it is not true the closing of the Henry dam raised the level of the Illinois River at 1949 low water four or five feet? A. It raised it some, but I don't know how much.

Q. Now, if it is true, that when these piles were constructed in 1870, that the low water of the Illinois River was different than it was after the construction of the Henry dam, and if it was true that these piles only stood out of water four or five feet at the shore line at the time they were constructed, how much did the raising of the low water on the river affect them? A. Oh, you have got me. I don't know what you are talking about.

Q. I am sorry and I will make myself just as plain as I know how. A. You say the Henry dam was put in in 1879?

Q. That is what I say, yes sir. A. Well, the Henry dam was put in before 1879.

Q. I am not going to argue with you. It is just another case of where two men think differently about something and it is for somebody else to decide. I am not going to argue with you about that.

Mr. O'CONOR: I object to that, arguing with the witness.

Mr. CHIPERFIELD: I am not arguing. There is a question pending and he made a statement instead of answering the question. Read that question.

(Question read.)

1950 Q. When the low water was changed where did it then stand on these piles? A. Well, the low water was changed before 1879.

Q. What? A. Well, the low water was changed before 1879, before the Henry dam.

I didn't notice any of the piles before the Henry dam raise came in. I don't know when the Henry dam was put in. I could not answer how much the raise of the low water affected the distances these piles stood out of 1951 the water. In 1890 at low water these piles stood out four or five feet. I could not tell you whether it was just the same distance as when they were constructed. At

low water mark now they are four or five feet under water.

Q. So that the river has been raised, according to your contention, from eight to ten feet? A. No, it has just raised four or five feet from 1890. That is what I am saying.

1952 Q. Then low water would be four or five feet below the top of these piles before 1890. That is true, isn't it? A. Yes, sir, four or five feet.

Q. Now, follow me. Now since 1890, you say the low water is four or five feet on top of these piles, above the top of these piles? A. No, I say the piles are level with the top of the water now. I say it raised four or five feet since 1890.

1953 I last investigated the condition of these pilings last summer. They were just level with the water. They are half a mile west from the Peru bridge down stream.

1954 I base my conclusion that the water is higher just on those piles, that is my sole source of knowledge. The

1955 ice has never taken any of them away nor broken them off, but they are bent over. When they are bent over that would put them further under water. I don't know how much they have been bent, how much shorter they would be I don't know. The ones I say that were under

1956 water were never bent. It is the only lot of piles running out into the river at that point. I have not seen the piles entirely under water at high water.

I think the Illinois River rises from low water to high water as much as ten feet. I have seen water in Water street, but it has been filled up since. Some of the base-
 1957 ments on Water street have had a couple of feet of cinders put in since that time. It is in Peter DeGroot's
 1958 house. DeGroot was not a steamboat man. The filling of the cellar with cinders had nothing to do with raising the water and the level of the river.

WILLIAM JACKSON, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is William Jackson. I reside at Peru between the bridges. I will be 60 years old next April. I have lived in Peru since 1890. Farmed the bottom lands 1960 ten years ago. Farmed ten acres of Waugh's land. It was in 1901. Although there was a flood that year I got 1961 in in the spring about May 3rd. The ground was in fine condition. Husked a little late in the fall, but the corn got ripe. In the neighborhood of 100 bushels to the 1962 acre. The ground was dry. Had good yellow corn. I hauled it home and sold some of it and fed some of it. 1963 The year was a very dry year. I farmed some eight years ago, ten acres. The last farming I done was in 1964 1904. I got on the ground late in June. I could not get 1965 on earlier, the water was too high. The corn was soft, 1966 did not mature. Left it until the water commenced to rise and then husked it. Husked it all. It was a good 1967 big crop but it didn't get ripe; it was soft and milky. Probably 200 bushels were rotted. Picked the corn and took it home and sorted it. Picked out the softest and threw it to one side. That winter it was not very cold and in a month or two it commenced to heat and turn black. We sorted it again and threw the corn on the outside of the crib. It lay there until towards spring when 1968 we fed what we could and burned the rest for fuel. It made a fine fire, the finest in the world.

In 1904, there was a good deal around there that was in crop. I guess probably there was two-thirds of it farmed that year.

Cross-Examination by Mr. Chipperfield.

In the year 1901, I farmed a ten-acre piece of this land. It was the second year after the Sanitary District was opened. Put in a nice crop and I got ripe corn and took off a good yield; something like 60 to 70 bushels to 1970 the acre. I paid \$5.00 an acre rent to Mr. Waugh. This was the second year after the Sanitary District was 1971 opened. I don't recall how it was in 1900.

Seven or eight years ago I had ten acres more. The ten acres I farmed in 1901, was right by the slough, east of the slough bridge higher than the land I farmed in 1904. I couldn't tell how much. I suppose from four to five feet higher. 1904, did not get a crop in until late. 1972 The land was wet but not covered with water. I don't 1973 know just what time it was, after the 15th of June, however. I planted the land right near the river, right on the north end. I was cut off from the river by some tim- 1974 ber. My land was on top of the bank, I should say, two or three feet above the level of the river at that time. We got a crop in but it was soft. The land not in a satisfactory condition, but the crop came nicely. I had a good crop. The corn did not get ripe on account of it being too late.

Never have had any experience with silos. The corn was in the milk. I raised seven or eight hundred bush- 1975 els on that tract. By rights it was not fit to feed, but it was all we had, so we fed it. Some of it was unfit for 1976 feed, killed the chickens after we left it stand.

Frequently before corn ripens we cut the corn and feed it to the stock, horses and cattle and when it is still soft you feed it. We could not feed it quick enough to 1977 keep it from spoiling. If we had cut it and shocked it you could leave it in the shock and it will fill out, it will mature, but it won't when the frost kills it on the stalk.

We cut corn and shock it. It would stay green and nice ordinarily until spring, but not in the crib.

I burned over 200 bushels of it. I picked some and sold it when it froze, got about 15 or 16 cents a bushel. 1978 I sold it around to the Polish people. Worked it off on them. I fed that one winter the best I could pick out. I did not measure it, probably in the neighborhood of two-thirds of it to the stock and horses.

The year 1904 was a very wet year. In 1907 and '09, 1979 the water did not come up on the land after I planted it. Paid \$5.00 an acre to the plaintiff that year. The crop was not destroyed by water, that was the contract.

I testified in the Brannan case.

Q. Do you know whether or not this question was asked you, "Have you ever done any other farming besides working that land," to which you replied, "Yes, sir"? A. Yes, sir, I did.

Q. "I farmed twelve years on Mr. Duncan's land just south of La Salle on the bottom road farm land, for four years"? A. Yes, sir.

1980 Q. Then was this question asked you, "Did you raise corn there," to which you replied, "I did and it was not worth anything and I quit it"? A. Yes, sir, the price was low.

The price was no good, 16 or 17 cents a bushel. That was before 1900, about 17 years ago.

1981 GEORGE W. BRAUN, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is George W. Braun. I have lived at Cedar Point since 1853. Was born there. After 1890, farmed a part of Section 21, in 1894. Farmed none of that land

1982 later. I farmed and had control of all that part of Section 21, south of the Illinois River. I farmed it from 1890 until 1894; did not have it after that. In 1890 we had an early spring, went in there and raised corn on all of it 1983 which was not timber. I cannot say how much was in corn, but something like 320 or 350 acres. The corn was 1984 good. Went from 50 to 70 bushels per acre, some of it. There was a difference in the average. It was all planted to corn that was tillable. Got in about the middle of May and had a good crop running about 70 bushels to the acre.

1985 After husking those two years they turned the stock into the corn fields. The stock was practically 1986 there during the winter until along in February.

In the year 1892 high water and no crop. In 1893 we had corn on this land. Got in in May and the crop matured and got a crop about seventy bushels.

I lived there in the spring of 1894 but did not farm that year. Sam Waugh farmed it. I moved from there 1988 to Cedar Point where I now live. The buildings that were used in farming this land there were on Section 28.

1989 I was in the vicinity of the land between 1894 and 1902. Pretty hard to tell how often I saw them. The 1990 lands were cropped during those years always to corn 1991 down to 1901. They raised good corn crops. I was actually on the land a part of the time; not until the fall, along in October. Never did any husking there. 1992 The corn stood pretty fair in the field. After the corn 1993 was husked they pastured it.

I am acquainted in a general way with the river conditions of the Illinois from 1890, down to 1901, and since 1902, up to the present time. There was a difference in the years.

1994 Take it in 1903 and 1904, the low water stage was not

as high then as now. In 1901, we hardly noticed any water. I noticed there was dirty water coming down there and quite a sudden rise all at once but it was not so very much and after that from year to year it was rising, it was increasing. In the last five years it has come 1996 higher all the time.

The artificial construction which assists me in determining the condition of the level of the Illinois River from 1890 down to say 1901, was a tile we put in in 1888. We tiled some of the low land that I own and we extended a big iron tube out to the bank where the water was to run into the Illinois River. The bottom end of that tile was put on a stone foundation, cement or sand. Three and one-half feet above the low water mark and at the present time that tile, being a twelve inch flue, is under 1997 water. This summer I went down to find the tile and I found the location but could only find where it was, where the water was shooting out by putting my foot down and feeling the cold water. Last year it was covered. I did not measure it, it was covered. It was in 1998 water. In 1910, I never saw the top during that year. 1902 was a wet year, big flood. Noticed changed in the flow of the river since 1902, both spring and fall. In the spring the water don't go down like it used to, 1999 holding the water up in its banks, which causes the land to be filled with water. It stood higher in the ground than it did in the river until the water in the river settled down and gave it a chance to drain away. It keeps 2000 the land cold.

The roots of the corn go down four or five feet to dry ground. If the ground is not at least four feet, if the corn hasn't at least four feet of dry ground in which to go down it stops the growth; makes the ear grow smaller and smaller and it does not ripen in time to harvest.

2001 Q. In the year 1900, in the month of January prior to

the turning in of the Sanitary water, were you familiar with the fair cash market value of this land in section 21, and other lands similarly situated? A. Yes.

Q. What in your opinion in the year 1900, in the month of January prior to the turning in of the water, was the fair cash market value of this land located in section 21, that you have been speaking of?

Mr. CHIPERFIELD: Objected to as no proper foundation has been laid.

Objection overruled.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. When I consider everything, I consider the land was worth at that time \$150 an acre.

Q. Have you an opinion what the fair cash market value of that land was in the year 1900, in the month of January after the turning in of the Sanitary water, considering the facts that you now know in relation to the flow of the Illinois River since that time?

Mr. CHIPERFIELD: Object to it as no proper foundation has been laid and asking the witness to take into consideration matters which may be known only to himself and not disclosed by the evidence in this case.

Objection overruled.

To which ruling of the court the defendant by its counsel, then and there duly excepted.

A. That means I have got to take into consideration this water that is turned down into the river now.

Mr. O'CONOR: Yes, sir.

A. Why it is worthless.

2003

Cross-Examination by Mr. Chiperfield.

I am the owner of bottom lands and have a suit pending at this time against the Sanitary District. I am not directly interested in the outcome of this suit. I suppose

my case would have to take care of itself. I don't think I am indirectly interested in the outcome of this suit. I 2004 don't think I ought to care which way it is decided, but certainly I would like to see them win. While I have been subpoenaed as a witness I have been volunteering my service and giving information, and have assisted in suggesting witnesses and have made myself generally pretty active.

I have never been at Lockport or seen the controlling 2005 works. I don't know there is a Sanitary channel except as I have read about it. I know nothing about it 2006 of my own personal knowledge.

I do not know that the water shed of the Illinois River runs over into the State of Indiana or that it runs into the State of Wisconsin. I don't know anything about 2007 that. I don't know anything about whether there are changes that affect those two portions of the country or change the conditions in the Illinois River. I don't know 2008 whether there have been drainage districts constructed within the last ten years that cut off the carrying capacity of this stream over 100,000 acres where the former bed of the stream used to be. I would not think these 2009 things would have any effect on the amount of water in the river or the carrying capacity of the stream until I seen them. I simply take it for granted from what I have read that all of the increased water in the Illinois River comes from the Sanitary District.

2010 I don't know whether the bottom of the river is rising or the bottom lands are rising. I think the carrying ca-
2011 pacity of the river is decreased since 1900, because the low water stage is so much higher. When the low water stage was lower there was that much difference between the prior low water stage and the present low water stage, and that has been filled up. I mean the river is more full of water.

2012 I did not say the ground was soaked up and therefore
 that interfered with the flow of the Illinois River. I
 claim the ground is saturated from year to year and
 does not dry out like it used to. The water always seeks
 its level. When the water comes out over the banks it
 is like the country used to be when the water would fill
 the ponds and would not get away until the air and
 natural condition would evaporate that water. This is
 the case right here in the bottom lands in some cases
 where the surrounding banks are higher and the water
 2013 can't get out of there. The water has been four or five
 feet higher. It depends upon the case of whether the
 water runs back under the land a mile or two. The soil
 2014-15 in the bottoms is entirely different than it is in the
 bluffs. Can't tell you a point where I can go back a
 mile from the Illinois River and find a river of water
 2016-18 under section 21. I did not say that under the en-
 tire section there stands a dead body of water four or
 five feet higher. I said it was higher.

2019 I got the map I show you from the plaintiff. I think
 2020 it was made in 1905. The pond I show you used to be
 a very big pond before 1890; it contains now about twelve
 acres. It used to be there before 1890, it was there every
 year. The pond does not appear upon the survey that
 2021 has been introduced in evidence. It leaves out a pond
 of some twelve or thirteen acres. It was never tillable
 in any year that I ever knew this land, nor were there
 any crops raised on it. I have not been to the pond for
 2022 several years. I don't know how deep it was then. I
 can't tell you how deep it was because the depth varied.

2023 It was from six inches to something like two feet to the
 best of my recollection. The pond is from eighty to
 2024 sixty rods long. Its source of supply is the water from
 the bluffs and the river. When the river is lower than
 the pond the river does not feed the pond.

2025 I can point out the pond on the plat that has been introduced in evidence. It is right in there.

2026 I know the Illinois River has a current swifter now than before 1900. I don't know how much, maybe twice.

2027 It runs a whole lot faster.

In giving my notion as to the value of the land, I took into consideration all I knew about the land, the values for different purposes for which it was adapted and the rental and everything. I think it is worthless now. I would not consider it worth anything after that although they had some use of it. It could not be sold to anybody that knew anything about the conditions. I don't know of anyone that would buy it. I don't know that you
2028 would have to pay somebody to take the land off your hands.

2029 Mr. John Martins' land in Eden Township, section 8, sold for as much as \$100 an acre before January, 1900. Martins bought that of the Whittaker estate for \$100 an acre without the coal. I don't know that that land was bought in 1903. The land was improved. There were some buildings on it, eighty acres.

2030 I don't think I am influenced in my idea of values before and after 1900, by the fact that I have got some land lying right next to this. I don't think it influences me a particle.

I understand that this land is all underlaid with a
2031 valuable vein of coal. I don't know how much rental I paid for the land the year I leased it. I don't know
2032 what I paid for the land in 1890, whether it was \$1 an
2033 acre or not. In 1890 it was \$500 cash for the land that year. For the four years that we occupied the land besides some improvements that were done every year, we kept adding timber ground, the timber was grubbed out, cleaned out and it made farming land of it. I mean we

2034 paid \$500 each year. The arrangement was not \$1 per
acre.

The timber we cut we hauled up to the Carbon Coal
Company and they paid us for hauling it up there and
paid for some of the chopping, but they did not pay for
grubbing the stumps. The props that we made out of it
2035 we sold to the company.

There were between 350 and 370 acres that we had
from the company. I do not know that the plat shows
2036 over 400 acres. It may show it but I didn't know it to
be there.

East of the slough the land belonged to the Braun
estate. In 1894, I guess I was the owner then. When
2037 we first went there we figured that at only about 260
acres that we had in cultivation. While we were there
we cleaned up about sixty acres, making about 320.
2038 There was about fifty acres west of the land covered by
pond I spoke of and the timber.

When I say that the land is worthless at the present
time I do not see that it could be used for any other
purpose only agriculture purposes.

I think that this field of coal underlying this land
could not be used by the plaintiff in this case. I don't
think they are claiming any damages to the coal. I know
the La Salle County Carbon Coal Company is organized
for the purpose of mining coal. I know they are in the
2039 coal business, and they have a couple of mines right at
the edge of these lands. They have mines scattered all
around here.

Q. I am afraid the court will not let me enter into a
legal discussion with you over the subject. I asked you
the question if you did not know, if you wished to be
fair in this case, that they gathered this land together
for the purpose of mining coal.

Objection by plaintiff; objection sustained; to which

ruling of the court the defendant by its counsel then and there duly excepted.

2040 Mr. CHIPERFIELD: When this witness volunteers a statement to the effect that the ownership of the surface was not necessary for the ownership of the coal, isn't it a fair question then to follow to ask him if he does not know, if he wishes to be fair about the matter, that this land was gathered together for the purpose of coal mining operations, I want to show the fact.

The COURT: I think I will sustain the objection to that question.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: It is to the entire question if your Honor please?

The COURT: Yes.

Mr. CHIPERFIELD: Q. Don't you know that the La
2041 Salle County Carbon Coal Company, the plaintiff in this case has gathered this land together for the purpose of conducting coal mining operations and of removing coal from the land?

Objection by plaintiff; objection sustained; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

2042 Mr. CHIPERFIELD: Q. Did you take into consideration in your replies as to the values of those lands every legitimate and proper use of which this land was susceptible?

A. Only for agricultural purposes.

Q. Why did you exclude another use if you know of any that this land has in making your reply? A. Because it is not affected by the drainage.

Q. If you were to sell these lands you understand do you not, Mr. Braun, that you would sell the coal as well as the surface? A. Probably, might not, they don't do it in general.

Q. Don't you understand if you convey fee simple title
2043 to this land it conveys the coal and everything else connected with it? A. It is not necessary to do that.

Q. I did not say it was necessary to do it. A. It is not customary.

Mr. CHIPERFIELD: If your Honor please I want the record to show I am unable to elicit answers from this witness and I decline to cross-examine him any further.

2044 FRED A. MUDGE, a witness called for the plaintiff, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Fred A. Mudge. I live three miles south of Peru. I am about forty-eight years old. I am a farmer. I never did anything else. I own some land; about 460 acres. In going to Peru from my home I drive across what is known as McCormick's slough; and drive
2045 across the bridge over the Illinois River. I was acquainted with Mr. Waugh. I remember when he was farming land west of the road; east of that road. I used to go down to Mr. Waugh's place, from the year 1890 down to the year 1900 occasionally; probably down there once or twice or three times a year at his house; occasionally,
2046 but not very often, would go on his land. The land was used at that time altogether for corn. The year 1892 was a wet year, upland and bottom land. Outside of 1892 they had a corn crop on this land from the year 1890 up to 1902. I won't say they had a full crop every year but I know we used to speak about there was nine years without a failure on the bottoms; something unusual. 1902 was a wet season also. I have not been upon that land very much since 1902. I can see it as I cross the slough bridge, look across and see the condition of the
2047 land. I have not been on it this year, but I can see it

as I go over the bridge. All you can see there are the weeds across the bottoms.

Q. Now, at any time in the year 1900, Mr. Mudge, prior to the turning in the Sanitary water into this valley, I will ask you whether or not you were acquainted with the fair cash market value of this land and of land similarly located in that vicinity, without stating what it is at this time, were you familiar with the fair cash market value? A. I don't know of any lands changing hands on the bottoms at that time; I was not—I could not say I was familiar with it, only I could judge what it would be by the crops that were raised there, considering them with the same crops raised on the prairie farms.

2049 I would have an opinion as to what was the fair cash market value of this land in the year 1900, prior to the turning in of the Sanitary water into the valley. I think
2050 it was \$100 an acre.

Q. Taking into consideration, Mr. Mudge, what you know now at the present time in relation to the flow of the Illinois River, turning in of the water by the Sanitary District of Chicago, what was the fair cash market value of that land in the month of January, 1900, after the water was turned in?

Objected to by defendant; objection overruled; defendant excepts.

2051 A. Well, if I was taking in consideration just now I could say what I thought it was worth just now.

Q. Carrying conditions back to 1900 that you know now is the idea?

Modification of question objected to; objection overruled; defendant excepts.

2053 A. I don't consider it worth anything.

Motion by defendant to strike answer; motion overruled; defendant excepts.

Cross-Examination by Mr. Chipperfield.

In saying that this land was not worth anything I had it in mind as I can see it on my way down. I have not seen a crop on it for years. I cannot see that part where the crop is growing this year as I go to town. I have
 2054 not seen the crop this year. I am not answering as to the whole. I am speaking simply of the land I can see on my way to town. I tried to qualify my answer so it would not refer to all the land and was not allowed. I don't say now that all of this section 21 is worthless. The land that I see that is not in crop, I haven't seen them in crop for several years. I am not speaking of the coal. I am simply speaking of the surface of this land. I didn't have coal in my mind at all in fixing values. The coal has, I suppose, a very consider-
 2056 able value. I am speaking simply of the surface. You can't say that the land is worthless if the coal is there and considered, but I am simply taking it as a farming proposition. That is all I was asked about. Coal has a value. Coal always had a value in 1900 and since, certainly, and if the coal is included in the land, the land
 2057 cannot be considered worthless. I never knew much about bottom lands changing hands; not interested in bottom lands and never have been; never owned any; never knew much about it in that way; never knew anything about it changing hands; don't know whether bottom lands similarly situated to section 21, in the years '96, '97, '98 and '99, were exchanging hands at from \$20 to \$30 an acre.

Q. Have you taken into consideration in your answer anything as to the market value, when you say it is worth about \$100 an acre? A. I simply took into consideration, as I said before, what the land would produce.

Q. My question to you now is did you take into con-

sideration the market value based on what it would sell for on the market? A. No, because I said I didn't know anything about that part at all. I don't know anything about that part.

Q. Well, when you were asked if you had an opinion as to the fair cash market value, you said you did. Did you have at that time any opinion as to the fair cash market value of this land? A. Well, I answered that
2058 question there simply basing my opinion on what the farm land was worth on the prairie that produced about the same kind of crop this did.

I based my answer solely upon its productiveness and did not attempt to express any opinion as to the real market value. That is all we take into consideration when we buy land for farming purposes. I considered nothing else.

Q. And did you then consider it simply and only for agricultural purposes? A. I never looked at it as a coal
2059 mining proposition owned by this plaintiff. I don't know what section this land is in. I never looked it up. I couldn't say how many acres my opinion applied to. I don't know how much land is there that can be seen from the road. I haven't any idea. I know I can see quite a bit of land there that has been in weeds for a good many years. I never paid enough attention to tell
2060 how many acres were there but you can always see a long strip without anything in it and further back you can see the corn. I cannot describe it by acres, nor about how much there is of it. I can't tell how long or how
2061 wide the strip is that I have in mind. There was certain lands between the Peru road and McCormick's slough. I was speaking simply of the Coal Company's
2062 land. I think the Braun land is further on. I don't include as worthless the land where the corn is growing this year. Where there may be 12,000 bushels of corn

growing on the land there would be some value to that land, and I have not expressed my opinion as to what that would be. I remember of one transaction before 1900 in La Salle County, where land was sold for as much as \$100 an acre. It was right around 1902 it was sold for 2063 \$100. That was an eighty acre piece. You could put any kind of buildings on that land. If you were to build anything on this land in section 21 you would have to raise them up on account of the high water, I suppose. I have seen this land covered with many feet of water many times. I couldn't say as to the depth; once or twice since 1892 it has been over the Peru road.

2065 WILLIAM WEYGAND, a witness called for the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is William Weygand. I live south of La Salle about a mile. I am forty years old. Been living in La Salle for the last eight years. At the present time I am working for W. J. Brannen, south of La Salle. I have been working for him three years the first of March. 2066 I do farm work most of the time for him; have been doing some farming for myself in the Peru bottoms. It is south from Peru; land south right across from the zinc works. It is the same land that was farmed by Sam Waugh. I was farming that land this year, 1912, for Brannen. It was pretty late when we got in this year. 2067 It was later than April; about the month of June. I should say it was in the month of June when we finished planting this year. We got our farming implements on the land this year by loading them on a barge and we drove the horses through by hand. We loaded the barge at the La Salle bridge and went down with gasoline 2068 launches from there. The land is east of the Peru

2069 bridge. When we got on the land it was pretty wet.
 2070 We started to plow several days later. We would get the highland ready first and then the low stuff; plant the highland first and then afterwards get the lowlands ready. We had to stop off pretty near a week apart on the places, because it was too wet. This year we planted about 150 acres. I have been husking some of that corn this year. The corn this year is in bad shape, some of it; soft and milky. I was working there last year, too. Last
 2071 year we got in a little earlier than we did this year. I think we had pretty near 200 acres in crop last year. We got part of it and some of it was soft, last year. There was quite a bit of it that was good. The water came up and we had to leave some of it on the ends and had to get it in on the ice later. The water came up in husking time. We had fair corn last year except the first plantings on the low ground was bad. The weather got so bad we were unable to get out some of the corn last
 2072 year. We couldn't haul out over fifteen bushels on a load and get it out.

Cross-Examination by Mr. Chipperfield.

I don't know exactly how much corn was taken off that land in 1911 but I should judge it would be about 9,000 bushels. Some of it was good and some of it was bad. I don't know whether we got around 60 cents a bushel for it or not. I don't know what he got for it. There
 2073 ain't very much corn in there this year. I don't believe we will get over 7,000 bushels probably. I have been
 2074 doing the farming in there this year. Mr. Brannen used to come down this year and see what work we were doing. He has been there sometimes as high as once a day. It was the land Mr. Brannen was farming. I don't think there will be 9,000 bushels of corn on this land this year. Some of it will average thirty bushels, thirty-five

bushels; the rest of it will average about forty. I don't know how much there is already hauled off. I am not doing any weighing or anything of that kind. The south field is husked. We have got about one-half. One-half of 2075 the field we have hauled out. I don't know how much has been taken over to the cribs because I didn't measure 2077 the cribs. I have no idea what corn is in the cribs nor 2078 how much has been already husked. I have been down on that land two years now; two summers. I should judge there is 150 acres in corn this year. I can't figure an acre and I have never measured it. I can just about 2079 tell the size of an acre. There is two other pieces of this land in corn there this year; yes sir, there is three. Bierce has got a piece in there and a Polish fellow has got a piece in there and Cosgrove has a piece in there, besides Brannen's land on section 21. There is four pieces 2080 of corn all told besides what Brannen has planted there. I couldn't tell you the size of the Braun piece. Cosgrove has about thirty-five acres planted; Bierce has about thirty-five acres; a Polander has about thirty acres below that.

Q. Do you know all who have corn in there? A. Bierce and this Polish fellow and Cosgrove and ourselves.

Q. That would make something over 600 acres of corn in there this year, wouldn't it? A. Yes.

2081 There was no overflow on that ground at all this year. I couldn't tell about the corn crop last year. We didn't sell it so I could know. My opinion is we have about 150 acres planted. That is my judgment.

2082 GEORGE MARTENS, a witness for the plaintiff testified as follows:

Direct Examination by Mr. O'Connor.

My name is George Martens. I live in Peru. I have lived in Peru about thirty-five years. I am thirty-five years old. I am at present working in the Peru Plow and Wheel Company. I have farmed and know where the land was located south of Peru, formerly worked by Sam Waugh. I worked there. I worked there in 1895, '96
2083 and '97; for three years. I have done work there after, besides 1899 and part of 1900. In the year 1895 we started to work on the ground on the 17th of June. I was working for Mr. Waugh. We had nothing but corn growing at that time. I started to cultivate the corn field in June, 1895. The corn had already been planted.
2084 The corn was then about thirty inches over the ground. I worked for him all during that summer. Stayed there in the winter; worked for him for three years consecutively. I stayed with him. According to my judgment there would be about 300 acres in that bottom piece that lies south of the river, in the whole piece. It was under cultivation. At that time there was some timber on the
2085 land. We husked the corn that year about November. The ground was dry when we went in there to husk; corn averaged about sixty to seventy bushels an acre; corn had matured but it was not very hard; not as hard as it was supposed to be; not dried out. After the corn was husked they run cattle and horses in it until about January.
2086 In 1896 we started to plant in May. We planted the same as we did the first year; corn matured. We husked the corn that year in November. That was kind of a dry season. A man could pull a good ordinary load; about fifty bushels of corn per acre was raised that year. I

2087 am giving my estimate by weight. The land was put to the same use that year as in 1895, after the husking was over. The three years I worked there were pretty nearly in the same condition. In 1897 we planted in May. The conditions in the three years were practically the same. I worked there again in 1899. I worked for Sam Waugh, doing the same kind of work. We got the crop in that 2088 year in May. We got the crop in all right. They put 2089 in about 300 acres in 1899; crop matured that year. I was there at the time it was husked. I think it was a dry season the same way. I worked there until July in 1900. I was there during the planting season that year. We got in on the land about May. I didn't do the planting. I done the dragging work there and plowing. Since 1900 I have not worked on that land.

2090

Cross-Examination by Mr. Chipperfield.

They pastured some of this land. That is, they ran their stock on there for feed. The only feed there was stalks. After they took the corn off they let the cattle go in the stalks. I stayed there during the winter. We drove the cattle off after the high water would come off. 2091 They would drive them off to higher lands. I was not there in planting time in 1895. I think there was 300 acres planted that year. It would average about fifty bushels to an acre. The corn dried out as far as a man could see. The corn never dries out in the bottoms until 2092 a good frost hits it. I don't mean the corn hadn't got its weight, the weight it had in January. They figure eighty pounds to the bushel from October to the 1st of January, but you can't take judgment on the corn as you could do from January to March. Corn gets lighter after that. That year it dried out the same as other years. Take bottom corn, corn that was raised on these bottom lands, and it don't dry out as quick as it does on

the prairie land. I have observed that. It is a wetter
 2093 place to raise it; that is why. It is not as dry as over
 on the prairie. We put in the same amount in 1896,
 2094 about 300 acres. The balance of the land not in crop
 was in timber and rubbish. They had different places
 in there. One part where they called it the road in there,
 laid on both sides; it had timber in there and there was
 2095 a slough. I couldn't judge the area of the slough. There
 were two sloughs at that time. The slough lying between
 Waugh's and the coal company's land might have been
 sixty rods long and about 200 feet wide. The other
 slough was the McCormick slough. There two sloughs
 were not farmed at all. There might have been two
 2096 acres in the second slough. They had other different
 spots where the ground was not used. That would leave,
 all told, about ninety acres slough and waste land. It
 2097 would not be 320 rods; it would be about 280. There is
 not any timber there now. I have never seen this map
 before. I was over in Mr. Duncan's office, but I didn't
 2098 examine the map. According to that direction it would
 be right in here where the river bends. The big timber
 laid right along here, the south part of the land. Well,
 there is timber along the slough and then right in here
 is the corn field and right in here was the timber land.
 2099 There is corn right around here; right in through here.
 Then on the south side there was a slough. In 1896, I
 think it would average about fifty bushels, and in 1897
 that averaged about the same. That was about the aver-
 age yield during the time I was there, fifty bushels. In
 1900 I stayed until July. Well, as far as planting the
 corn is concerned we got in a nice crop that year. The
 stand was good, but I wasn't there in the harvesting sea-
 2100 son. It was not in husking time. It was in the spring.
 In the spring after I had planted, it came up just even
 with the embankment; she went down again. It didn't

get into the cultivated part of the field. It came into some of the land that was prepared but not planted. It didn't cover very much of it. I think it was in 1897.

2101 LOUIS LEIDELL, called as a witness for the plaintiff, testified as follows:

Direct Examination by Mr. Butters.

My name is Louis Leidell. I live in Peru. I have lived there fifty-three years. Have been commissioner of highways. I know the land that was formerly occupied and farmed by Mr. Waugh in section 21, south and west of the river and east of McCormick's slough. Oh, I know that land ever since I was a boy. I live in the western
 2102 part of Peru. From 1891 down to the next ten years, I saw the land every week a couple of times. They raised corn on it, as much as I know. I couldn't tell the acres but they farmed the whole piece there; I don't know. They raised very good corn on the bottoms all through there. I was down there on the land while Mr. Waugh farmed it. I was up where the corn was growing so I saw the corn. Well, I couldn't just say every year what time they got crops in prior to 1900. They generally would have it in there up to the 20th of May or so. They
 2103 would husk the corn in November or something like that. They had a lot of stock there all the time. In 1892, I think that was the year they overflowed with water. I can't be just positive. I am familiar with the fair cash market value of that farming land in the vicinity of Peru
 2104 and La Salle during the year 1900. Well, maybe—any how at least \$100 an acre. I have an opinion as to what is the fair cash market value of those lands since the turning in of the water January 17, 1900. After they
 2105 turned the water in it was very little. I guess practically nothing.

Cross-Examination by Mr. Chipperfield.

My present business is nothing but commissioner of highways. I can't work. I ain't able to work. I am
2106 one of the commissioners of highways in the town where I live. I was a butcher before I became incapacitated for active business. I pretty near worked in that business all my life, outside of a little steam boating business about thirty years ago on the Illinois River. I have not been engaged in dealing in real estate very much. I don't own any farm property. Never did own any more than an acre and a half of land. That is all I owned. I bought several lots and sold them. I never have been a
2107 farmer; not what you would call a farmer. I don't know of any sales of land of this kind being made in the vicinity of the lands that are involved in this suit, outside of the Huse & Loomis Ice Company. That land was located in the bottoms, west of the Waugh farm. It was sold by the Huse & Loomis Company to a man by the name of Ernart. He bought that from the Huse & Loomis Ice and Transportation Company, it must have some somewhere in 1898, or somewhere like that; I can't remember. I don't know what the lands sold for. I did know, but I forgot. No, I don't know that land sold for \$40 an acre on the 26th of January, 1900. I know it was
2108 somewhere around that time. Well, I know there was time and again we talked about that land, that you couldn't buy it for \$100 or anywhere near around that; that is all I know. I don't know that nobody would have given \$100 an acre for that or any land so located, along about January, 1900. The upland was sold at that rate at that time. Some land right north of Peru was bought at \$150 at that time. Plantenburg owned it at the time it was sold. It was about two miles north of Peru. A fellow named Salle bought it. It was somewhere around 1900.

2109 I don't remember exactly. I don't know the section.
 It is in Peru Township. I say it sold for \$150 an acre.
 No, I don't just say it was before 1900 but I think about
 that time. I couldn't swear whether that was before
 1900. It might have been 1900 for all I know. I don't
 2110 think it was quite as late as 1904. Salle owns it at the
 present time. I know that this land is held and owned by
 the La Salle County Carbon Coal Company as a coal
 proposition. I didn't know it then. I thought that Braun
 and Waugh owned it. I know it now. I know that the La
 Salle County Carbon Coal Company have a couple of
 shafts near this land. I know they are engaged in the
 business of mining coal. I took into consideration the
 2111 value of this land for farming purposes, for the arising
 of corn. I don't know whether there was any coal there
 or not. If this land is underlaid with coal averaging
 7,000 tons to the acre, then it would have a very consid-
 erable value as coal land at that time. I didn't take that
 into consideration when I made my answer. What I
 mean was that the land was worth about that for farming
 purposes. When I said that the land was practically
 worthless, I meant for farming purposes.

Q. Now, if that section 21 raised 12,000 bushels of
 corn this year and 9,000 bushels of corn in 1910 and 7,800
 bushels of corn in 1911, would you say that that was
 worth nothing? A. Well, of course, I don't know how
 2112 much they raised on it.

Q. If it did that, I ask you, would you say that the
 land was worth nothing? A. Well, if the corn is any
 good.

Q. Well, if that land raised a full crop in 1900, and a
 full crop in 1901 and no crop in 1902, because it was a
 flood year, and raised a crop in 1903, 1904, 1905, and 1906
 and the sized crops I told you of in the other years, do
 you mean to say that the land was worth nothing? A.

Well, that corn that would be raised on there is not worth very much.

I don't know what they used it for. It was not fit for
2113 much, I guess. .It was not fit for horse feed, I say.

Q. If it would bring 56 and 58 cents on the market, you would certainly think it was worth something wouldn't you? A. Well, it looks that way, it is worth something.

Q. All I can tell you is what the witness who raised it said and he said about sixty bushels to an acre. Now, if it raises that quantity of a crop, even if it don't grade as high as it once did, it still is worth something, isn't it?

A. Well, I don't think it is.

2114 I saw some of the corn yesterday. I seen them driving out of there. Spoke to the teamster. I was talking to him. He had on maybe twenty or twenty-five bushels. I can describe that load because the end gate came out and he lost quite a bit of it. It was poor corn; soft and mushy. It was yellow corn; the ears were of good size.

2115 I wanted to use it for horse feed and it was no good. I picked it up. It was soft and mouldy. I don't know what would make it mouldy, but it was mouldy. It was
2116 too soft and wet, not dry enough. I know the corn ain't dry. Yes sir, I looked at it. They didn't show it to me, no. I looked at it myself. I didn't know anything about coming up here at that time. I told you before that it came from there. I seen it. I was right on the road when it came out; on the new road they built to come
2117 out with that corn. Certainly, I know where it was picked. I saw them in the field picking it. I see them pick part of it. I didn't see them pick the whole load of corn. I told you I don't know the name of the driver. I believe there is three drivers there. I only know one of them. He is a young man. I don't remember what sort of a team he drove. I don't know what kind of a team.

It wasn't Weygand. I can't give you any better description than what I told you. If he is here as a witness he will tell you the same thing. I have seen something of
 2118 this yield of corn before that time in the last three years. I think they got a better kind last year than this year. I can't tell how much of a crop they got in 1910. I can't tell much about the crop they got in 1908. I see it every day. I see it every year. All I know they got poorer corn than they used to get. I told you what I know about the corn on the bottoms. I know about the corn they got in 1907 just as I did last years'. I can't tell you any more about the corn they got in 1906. I know I see the corn every year for the last twenty-five years that they farmed there. I know the grade isn't any more what it used to be. I don't know how large a crop they
 2119 raised in 1906. I don't know anything about it. I don't know anything about the size of the crop. All I know is about the corn; the kind of corn they raised, and I don't know how much of a crop. I didn't keep track of it. I did answer you. I don't know anything about it. I don't know anything about the size of the crop in 1905. I know it was poor corn. I see it every year.

Q. Where did you see any corn from that field in 1905 and under what circumstances did you see it? A. Well, we drive through there time and again.

Q. Did you drive through in 1905? A. Yes, sir.
 2120 I am positive that I drove through there dozens of times every year for the last twenty years. I seen the corn in 1905. I don't know how many acres is in corn there now. I don't know anything about it. I only know the quality. I don't know how many acres were in corn in 1904. I don't know how many acres were in corn in 1903. I don't know how many acres were in corn in 1902. 1902 was the flood. I don't know how many acres of corn was there in 1901. I don't know whether there

was a first class crop of corn raised there in 1901. I don't know how much corn was there in 1900.

Q. Then if you don't know any of these things, why do you say this land was worthless after 1900? A. Well, 2121 I know the corn was better.

That is all I have got to answer here; that the corn was better before the drainage district came in here than it is now. That is as far as I go with the corn business.

Q. Let us say the corn was better, if you want to testify to that fact, would that make the land worthless now? A. Well, it would in my estimation. It wouldn't be worth much anyhow. I told you what I thought about 2122 it; what that land was worth. Well, of course, my own opinion as to what it is worth at present and has been for the last eight or ten years.

Q. Well, if you don't know the size of the crops that have been raised, if you don't know how many acres have been in there, if you don't know anything about these things, how can you testify as to the market value of that land since 1900? A. Well, I give you my judgment. You asked me and I told you what I thought it was worth.

Well, I certainly don't know how much corn they raised only I see what they are raising.

Q. If you don't know any of those things, how can you express an opinion as to its market value? A. Well, I would like to know why not.

I know I husked several acres of that corn myself before the Drainage District came in here. I helped husk it in the '90's. I can't tell you the year. I can't give 2123 you an opinion at all as to the time. It was in the '90's; I can't tell you. I was husking for myself. I got an acre from a man down there, from a fellow by the name of Kounselman. I paid him just what he paid for it. I paid rent; \$5, I think it was. I had to pay for the plowing and planting, too. I don't remember how much I paid

for that. I raised it myself. I hired a man to plant and
2124 plow. I don't know how much he has got.

Q. Do you know how much it brought an acre? A.
Well, I told you I thought about seventy-five or eighty
bushels to the acre.

Well, I didn't measure other people's corn, that is cer-
tain. I raised that much on my acre and mine was not
any better than the rest. That is the only time I ever
husked in there, two different times; an acre. Some-
2125 times you couldn't hardly rent it. Them days you
couldn't hardly rent a piece of ground in them bottoms.
Now nobody wants it.

Q. Before 1900, did you base your value on the fact
you had an acre of that corn two years? A. The value
of the land, do you mean if I base it?

Q. Yes. A. Yes, I do.

No, I don't know what section the land is on, that I
mentioned as having sold for \$150 an acre. It is on the
plank road, what is commonly known as the plank road,
in Peru township, about two miles from Peru. About
2126 two miles north from Peru; maybe a little more or less;
it is on the right hand side going out. I can't fix the date
any closer than I have already said. I was subpoenaed
to appear as a witness here yesterday afternoon. I
didn't know his name as McPhedron. I know a man
named Archie. We did have a few words.

2127 Q. When? A. Oh, I don't know when it was.

Q. What? I don't know when it was.

Q. About how long ago? A. Two or three weeks.

He didn't say that I was going to be a witness. He
didn't say nothing to me. I have no relation at all with
the La Salle County Carbon Coal Company that I know
of. Have no business connections with them in any way.

2128 WILLIAM HASSELMAN, called as a witness by the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is William Hasselman. I live in LaSalle. I am forty-three years old. I have just moved out there this summer. My present occupation is teaming for William Brannen. I have farmed some of the bottom
2129 lands located south of La Salle. '93 was the first I worked around the bottoms. I worked there up until 1902, started in 1893; worked there in 1894, 1895, '96, '97, '98, '99, 1900 and 1901. 1900 I quit. I was out for one year and came back in 1901 again. I worked on the bottom lands from 1893 all down to the year 1901 with the exception of the year 1900. The land was located north
2130 of the Carbon Coal Company ground.

Q. This is Shippingsport road running south from La Salle. This is Shippingsport bridge south of La Salle. Now, where was the land located with reference to this land that is shown on the plat here, lying east of the Illinois Central right of way? A. It was right in here (indicating on the map).

Q. Would it be north of it? A. That would be north of it, yes.

Q. Let me ask you whether or not at any time you ever worked any of the land lying west of the Illinois Central right of way and south of the center of the section; any of the Carbon Coal Company's land? A. Well, I didn't really work on it. I done some husking of corn on it.

Q. Did you ever work any of the land that lies west of the Illinois Central right of way and south and east of the Illinois River? A. No, but what is east of the Central Railroad I have; I have worked in there.

Q. About how often during those years did you go
2131 through this land here shown on the plat that lies in
the southwest quarter of section 23? A. Oh, I passed
occasionally to see how it was, right all the time.

I did go through that land to go to the land I was work-
ing. The road ran right along the Vermillion River.
Joe Stricker was farming that land at that time. That
land was cropped to corn during those years. It always
done well. Pretty nearly every year between the year
1890 and the year 1901 I did husking in there. I couldn't
2132 recall just exactly the time when I did husking. Pretty
nearly every fall I did some husking. I have husked for
Stricker. Well, I am sure I husked there in '93, '94, '95
and '96, in those years. I didn't husk any after that.
The last year was '96; generally would go in there to
husk about Christmas. That corn would run to, I should
say, from fifty to eighty bushels to the acre. It was good
corn. It couldn't be beat. It was as good corn as you
2133 could find. The corn did mature in there during all
those years. I never saw any soft corn. I lived right in
the bottoms on the Sullivan place; out on the bottoms along
the Vermillion River. I should judge about eighty rods
north of this land. There was a house and barn and
corn cribs. In going to La Salle I traveled right along
the Vermillion until we got up to this road leading by
the shafts and then I went west along the bluff and over
the Shippingsport bridge into La Salle.

Q. Take that road that runs east and west along the
bluff, how far is it from the land that lies between the
Illinois Central right of way and the river? A. I
couldn't say exactly how far it is.

The land comes very near the bottom of the bluff.
Very near it on the south side. The Deer Park road, I
should judge, is about a half a mile from the bluff. I
2135 couldn't say that the road is in the same place it was

formerly. I ain't been down there for ten years. The present road is half a mile from the bottom land. There is timber and such as that along the road. The road is not a great way up on the bluff. It wouldn't be over twenty rods from the bottom of the bluff up to where the road is. The bottom of the bluff wouldn't be over forty
 2136 rods from the south line of this bottom land. The Deer Park road almost joins the south line of this bottom land in there. You are up quite a bit driving along that road. You are not up to the top of the bluff. This road is up about the center of the bluff. From that road you cannot look over the land very well on account of the timber. In crossing the Shippingsport bridge you couldn't get a very good view from there. I have husked there and we drive around it when it was dry, around the river to make a short cut. Yes, I pass along the Illinois Central
 2137 and the Q. both. Oh, I would come through there every week or two weeks anyhow. Corn was growing there during those years. I couldn't say exactly how many times I was in there for husking purposes. Pretty nearly every fall all the way from those years. I should judge the character of the corn was all right, what I could see of it; good solid corn.

Mr. CHIPERFIELD: Move to strike the answer as not responsive.

The COURT: I think I will let it stand.

Defendant excepts.

2138 It was mature ripe. The condition of the ground when I went in there those years was dry; froze over generally at that time. I should judge all the land that lies west of the Illinois Central and south and east of the river, that corn run from fifty to eighty bushels all that time.

Q. Now, during those times, you may say whether there were any lost crops on account of flood conditions or high water? A. No.

Cross-Examination by Mr. Chipierfield.

I husked corn in the land west of the Illinois Central Railroad.

(Witness was taken ill at this point. Further examination will be found later in the abstract.)

2140 LOUIS BOERS, a witness called by the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Louis Boers. I live south of Peru. I will be forty-three years old next month. I have lived there
 2141 thirty-eight years. I am picking corn. I live two and a half miles south of Peru. I am farming some land there this year. I am on section 28 and farm 21. I am farming some of the land formerly farmed by Sam Waugh; the land that he farmed some years ago. That was the land that lies south and west of the Illinois River and east of McCormick's slough. I rented a piece of that land there this year; seventy acres; planted about twenty
 2142 acres; couldn't plant more than twenty acres; couldn't get it, it was too wet; got in there this year in June, I think about the 15th. The land at that time was pretty wet. Twenty acres was all the land I could get into crop. We planted it to corn. The twenty acres I refer to is about the center of the patch. I don't know how many acres they have got in there all told. The condition of the corn this year is soft; it is in the milk. I am picking
 2143 it now. I am feeding it to the cows and hogs. I farmed part of section 21 last year. We had the same piece. We call it seventy acres. We farmed as much as we could there. I think we got in about thirty acres last year; got in a little earlier than we did this year; it was wet. We

always had to ford to get into it. The high water came
 2144 up last year about September. The high water came
 up and we couldn't husk some of the corn last year. It
 was a little better last year than this year. I don't re-
 member what time we got in to husk, but around October.
 The ground was then wet. We had to drag out the corn
 little by little. Farmed the same land in the year 1910;
 had the same piece; seventy acres. In the year 1910 we
 2145 didn't get in much crop. I don't think we got any crop
 that year at all. We have had that piece of land all told
 six years. The corn raised in 1910 was not much good.
 2146 The corn we got off there was soft corn. During the
 six years that I have been there none of the corn was
 what you could call good corn. We got more last year
 than in any other year. I think we got around forty
 acres or something like that.

Cross-Examination by Mr. Chipperfield.

Rented this land from the Carbon Coal Company; paid
 2147 about two-fifths rents. I don't know how many bushels
 we gave them as rent in 1906; have no record that would
 show. I didn't keep track of it and had no record and
 I have no idea. In 1906 we had a pretty fair crop. I
 don't know how many bushels. I didn't keep any track
 2148 of it. We were farming another piece of land, two other
 pieces; farming what we call the home place. I didn't
 raise much corn in 1907; didn't plant this land at all in
 1907. It was a wet year. I don't know how much we
 raised in 1908. I didn't keep track of it. I can't give
 you any information on that subject. I couldn't state
 2149 how much we raised in 1909. I couldn't tell you how
 much we had in 1910. I kept no record; no track of it.
 We raised about a thousand bushels off this seventy
 acres in 1911; we had in about forty acres. There is
 about twenty acres this year. We raised about 400 bush-

2150 els this year. My people have a suit pending against the Sanitary District and I am interested in the outcome of this suit. We didn't keep track of any of the bushels raised or anything like that. Some people put it down in a book, but we never did. I haven't even any recollection or any memorandum that I could give to the jury.

WILLIAM HASSELMAN, resumed:

Cross-Examination Continued by Mr. Chipperfield.

2152 I know the crops being raised east of the Illinois Central Railroad. I don't know how many acres in any one year were planted in that one piece. I don't know how much ground there is in there. I never had any in there. The land I farmed was north of that. I think the land would raise fifty to eighty bushels. That is as close as I can estimate it. All I know about it is that I husked some corn in there. I couldn't say how many acres. It was planted on both sides and there was quite a good deal of waste ground; some ground that was in timber. There was some ground higher than others and some ground that could be planted to corn and some that could not be planted. I don't know how much there was in timber and that sort of thing.

ARTHUR MORRISON, a witness called by the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Arthur Morrison. I live in Peru. I am forty-three years old. I have lived in Peru all my life. I am a laborer. Since 1890 down to the present time I have been acquainted with the Illi-

nois River; have fished along the Illinois River; when not working I was husking or fishing in season. I have fished every summer. I have fished along the river and through the bayous; fished all the way from Peru to the Henry locks; fished in the bayous or slough across from the town there, called the Huse & Loomis slough, where
 2156 they cut ice. Huse & Loomis slough is about a mile south of town; starts from the bridge; have fished in there since 1900. I remember when the Sanitary water was turned into the valley. I noticed a difference in the level of the Illinois River since the turning in of that water. I have some marks and objects at different places that help me to determine the condition of the river as it is now at low water and as it was before the District
 2157 water was turned in. One of these marks is at the head of the ice breaker, at the center of the river bridge, right in front of Peru, in front of Water street. There were three piles drove right close to the ice breaker, one in front and two back about three feet, and in low water before this drainage was turned in those pilings, you could go out and sit on them and fish there on the nose of the breaker, during the summer months. Since the water was turned in you can't see them at all. The pile was probably four feet out of the water, before the turn-
 2158 ing in of the District water. Another place is the banks of what we call the lower slough, the north bank and the south bank. Before the drainage was turned in I have walked along that north bank with a spoon hook, casting flies for bass, and used to have lots of lilies growing along there. Now you can take a row boat and row along there. The water is up with the timber all along there. Another mark is at the point of the slough, where the slough emptied into the river. There was a steamboat sunk there some years ago, named the Belle of St. Louis, and there used to be a part of the hull stuck out of the

water; quite a bit of it; now, you can't see any of it. It would stick out of the water during the summer season 2159 and fall. At low water season now there is nothing there at all, nothing but water.

Cross-Examination by Mr. Chipperfield.

I am a laborer at odd jobs in Peru. I worked for the La Salle County Carbon Coal Company some years ago.

Q. You said in speaking of some of these conditions that now they were different than they were before 1900. Do you think that now is a fair time to compare the river 2160 with low water conditions? A. Yes, I do.

This is not now a low water stage of water in the river.

Q. Isn't the Illinois River at the present time four feet higher than it was last July? A. I don't know 2163 whether it is or not.

I have measured the water quite often to see the rise and fall of it. I often walk out and look at the water gauge. I have never taken a measure, to go out and measure it with a rule, but I have looked on the water 2164 gauge. There is a difference between the level of the river now and what it was last July. I couldn't tell how much. I didn't measure it. There has been a raise in the Illinois River in the last thirty days; I don't know 2165 how much; I haven't any idea. I couldn't tell you whether it is as much as an inch or thirty-six inches. I don't know when the river commenced to rise lastly. I think it was more than a week ago, about two weeks ago since I noticed it. It might have been a little before that. I looked at the river gauge during this summer and spring. I didn't read it in low water. It didn't bother me that the water was low. I only read the river gauge when it bothers me, when I wanted to go fishing and the water was up a little and I wouldn't go fishing.

2166 It got as low this year as it has been in the last five or six or seven years, I guess. I don't know what the stage of the river is now. I have no interest in the outcome of this suit. I think I could take measurements of the river now and tell how much lower the river was during the summer than it is now. I can't give you any idea of the difference without doing that. I can't give you
 2167 any other information than I have given. I know the river is higher than it was last July.

(Adjournment taken to November 21, 1912, at 9 o'clock A. M.)

2169 November 21, 1912, 9 o'clock A. M. Court met pursuant to adjournment. Present, as before.

Mr. CHIPERFIELD: I would like either to have Mr. Leidel recalled for further cross-examination or else have the privilege, in connection with his testimony, of introducing the record of the recorder's office of this county showing the transfer to which he referred was made in 1905 instead of 1900. I want to do that in connection with his testimony.

The COURT: If that is the fact, I suppose they will admit that fact.

Mr. CHIPERFIELD: I want to bring the record and show it the fact and have it be considered in connection with his testimony. It is the fact, as we have investigated.

The COURT: I will allow you to introduce that deed, then.

2171 "This indenture, witnesseth, that the grantors, Peter Pantenburg and Lizzie Pantenburg, his wife, of the Town of Peru, in the County of La Salle, State of Illinois, for and in consideration of the sum of sixteen thousand five
 2172 hundred dollars (\$16,500) in hand paid, convey and warrant to William Sale of the Town of Peru, County of La Salle and State of Illinois, the following described

real estate, to wit: All that portion of the northeast quarter of Section 6, in Township 33 North, Range 1, East of the Third Principal Meridian, lying east of the center of the Peru and Grand De Tour plank road, but excepting and reserving all bituminous stone and mineral coal underlying said premises, with the right to mine and remove the same without interference with the surface thereof; containing 110 acres, more or less, situated in the Town of Peru, in the County of La Salle, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state, grantors to pay the taxes for the year 1905.

Dated this 16th day of December, A. D. 1905.

PETER PANTENBURG. [SEAL.]

LIZZIE PANTENBURG. [SEAL.]

STATE OF ILLINOIS, }
LA SALLE COUNTY. } ss.

I, F. E. Hoberg, a notary public in and for the county and state aforesaid, do hereby certify that Peter Pantenburg and Lizzie Pantenburg, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 16th day 2173 of December, A. D. 1905.

F. E. HOBERG,
Notary Public.

Filed for record on the 18th day of December, A. D. 1905, at 8 o'clock A. M.

And the seal of F. E. Hoberg, Notary Public. Recorded on page 398 of warranty deed record, No. 352, of La Salle County, Illinois.

ARTHUR MORRISON, recalled:

2170 *Cross-Examination Continued by Mr. Chipperfield.*

It is some time since I looked at the gauge on the river bridge. I couldn't recall, I couldn't state what date it was. I don't believe I have examined that gauge since last spring; probably in April. I don't remember what the gauge was at that time. My best recollection is that
 2173 August was the low water of this year. I saw the river yesterday from off the hill. I was not close to it. I live on the hill, about 150 feet above the river, and I see it
 2174 every day. I should judge it was about two and a half or three feet higher yesterday than it was last August. That is simply a guess. I know where Lock 15 at La Salle is. I didn't make any observation of this piling at the river bridge during August of this year, when the river was at its lowest stage. I crossed the river bridge and was in the vicinity of them in a boat, but not where I could see them. I didn't make any observation to find
 2175 out where these pilings were this year. I never looked. I am pretty sure they are still there. I couldn't say whether the river was as low this August as it has been since 1900. I couldn't recollect that far back. It has
 2176 been low season on the Illinois River; last season was not. I mean 1911. The spring of 1910 the river was very high; the fall was not. I account for the difference in the stage of the river by the rainfall and probably
 2177 the drainage. I don't know whether the Sanitary District is steadily discharging about 350,000 cubic feet of water a minute or not. If the discharge has been a steady and constant one there naturally would be some reason for the fluctuation of the river. I know that the rainfall since 1890 has varied a great deal from year to year, and
 2178 they always did. I know the rainfall in the watershed

of the Illinois River affects the river stage since 1900, just as it did before. I know that the stage of the river is affected by the taking off of the forests and timbers and the speedier discharge of waters to the river. If the Sanitary District has maintained a steady flow of 350,000 cubic feet per minute for four or five years, the sudden changes and rises in the Illinois River must be due to some other cause than that. Before 1900 these
2179 piles stood out of the water, about three and a half or four feet. I never measured it accurately. That was in low water; in the lowest water when they stood out that much. I have seen some piles covered with ten or twelve feet of water before 1900, in the spring of the year. I admit it would be unfair to compare the high river con-
2180 dition with the low river condition to get results. To get a true and fair comparison you would have to compare similar conditions of the river. I have seen times when the Illinois River was a great body of water; almost a sea of water; extending clear from bluff to bluff, with a strong current, rapidly flowing down stream, and before 1900; in the spring. I
2181 have seen it also since 1900. I think the water since 1900 was higher than it was before. In 1892, May, was the highest water I have seen in the Illinois River; 1892 was before the Sanitary District was opened. There was another year that was about the same stage of water. I have not seen any higher water since. That is the highest
2182 water that I know of on the Illinois River. The high water of 1892 reached the cog-wheels of the turning table at the Peru bridge. They are located right on top of the stone pier, the circular cogs. That would be twenty to twenty-five feet higher above low water mark. I think it was almost that high again in 1902, practically the same as in 1892. Those were extreme high waters on the Illi-
2183 nois River. I don't mean to be understood or to say that

the river is four feet higher at high water than it used to be. When the water comes it is not confined to the channel. It spreads out all over the valley. I think when the water is confined to a 350 or 400-foot channel that it may be four feet higher than formerly. If you double the channel, make it 800 feet, it would be about two feet higher. If you increase it to 1,600 feet it would only be a foot. If you increase it to 3,200 feet it would be six
 2184 inches. If you could increase it to 6,400 feet it would be three inches. I don't say water from the Sanitary District alone is raising the level of the river perhaps four feet. The highest the river has raised is four feet. That is, water from everywhere. The channel is only
 2185 about 300 feet wide. If a stream is confined in banks 300 feet wide, if you move the other bank out 300 feet further, so as to make it 600 feet wide, the water will be only one-half as deep. If you move it out again double the distance, or 1,200 feet, it would only be a quarter as deep. If you move it out again for 2,400 feet it would only be one-eighth as deep. If you move it out again 5,600 feet, it would only be one-sixteenth as deep. That
 2186 overflow don't make any difference in the stage of the water from low water mark. If a channel is a foot wide with a stream flowing a foot deep, if you widen the channel to two feet with the same amount of water, you decrease the depth of the stream to six inches. If you
 2187 again double the distance you decrease it to an inch and a half. You might get it out so there wouldn't be any water left.

Q. Now, when this water commences to flow over these lands and extends back to the bluff a mile—it is a mile, isn't it, from one side to the other? A. Over a mile.

Q. When you get the water from bluff to bluff, do you mean to say that the water which has been added to the Illinois River, since 1900, by the Sanitary District or

from any other source, then maintains itself at a stage of four and a half feet higher? A. Four and a half feet 2188 higher from what?

Q. Than what it was in previous years under similar conditions. A. Yes, I do.

Q. The width don't cut any figure? A. Well, it don't seem to.

Q. You can take the same amount of water that is four feet higher when it is in a channel three hundred feet wide and widen it to a mile and a quarter and it still stays four feet higher all over that distance? A. It keeps coming just the same.

Q. There is nothing to dam the stream below, the stream is not standing, but going on, isn't it? A. You bet it is.

Q. Pretty fast, too, isn't it? A. A rip-snorter.

Q. Goes on rapid all the time, doesn't it? A. Yes.

Q. Three or four miles an hour under those conditions? A. Worse than that.

2189 Q. Five? A. I have seen it eight.

In low water, with the low water we have now it is going four miles an hour, pretty near. Before 1900 it was sluggish. It didn't go more than a mile an hour. If you take a stream of water in the banks of the Illinois River, that is flowing one mile an hour, it will carry a certain amount of water, and if you increase that current in the same channel to four miles an hour, I don't know whether it would carry four times as much water, but it will increase the current.

Q. Why won't it carry four times as much water if it passes twice as fast? A. It might in some places, and other places it backs up.

2190 I don't want to change my answer that the current was four miles an hour.

Q. All right, then, let us adhere to it and before you

said it was sluggish, about a mile an hour. Now, if it would flow four miles an hour now and one mile an hour then, wouldn't it carry four times as much water at the same rate as it did before? If not, tell us why not? A. In some places it would.

2191 Below, but not above the bar, it is faster. Below it, but not above it, the current is accelerated; below the bars you will always find the swiftest current; above it it don't flow as fast.

Q. Now, will you please answer my question. Those bars were in the river before 1900 and they are there since? A. Yes, you bet they were.

Q. And they obstructed the river just the same before 1900 as since 1906? A. Well, some of them have been washed out.

Q. All right, then the current would be faster, wouldn't it? Now, then, tell me, if you please, and I don't want to have to ask the question again if you will answer it, tell me, if you please, if the current would be four times faster, if the water moves along four times as fast, why wouldn't it carry four times as much water at the same level as it would when it was only flowing
 2192 one mile an hour? A. Certainly, it would. This steamer, the Belle of St. Louis, was located at a point of the bayou, lower slough, about two and a half miles down stream, on the left hand side of the bank. There is an iron rod there from the hull of the steamer. It must be out about ten or twelve feet from the bank. The bank
 2193 is very shallow there. The part of the steamer that would show in low water, with reference to this iron rod, was about fifty or sixty feet from where the iron rod was; west. It was southwest a little, down stream. The ice would never touch it. I don't think it is now in the same condition it was then. In the last ten or twelve years practically nothing left of it. Yes, you could find

2194 lots of it there. Yes, I think there is some of the ribs
 of that boat there yet. This rod was up on the bank, it
 was up on the bank. It might have been a couple of feet
 above the surface at low water. It must have been six
 2195 or seven feet from the river bank. I named the north
 bank of the slough, besides the steamer and the piles.
 That is about a half a mile up from where this boat was
 sunk, on the north bank, up stream. The elm trees that
 used to be there are all dead now. There is one left up
 there in that neighborhood, but it is dead and fallen down
 to decay. There is no building or anything about there;
 no buildings or anything about it. If compensated for
 my services I will point out to-morrow to the engineers
 2196 the location of this path. I could observe as to those
 piles being out of the water three and a half to four feet
 and this path by the bayou and this steamer also being
 out of water practically every summer. The low water
 has been in the summer time for years. I don't know
 Section 21 by number. I might know it. Yes, I know
 2197 that bank. I have a distinct recollection of Water street
 in Peru. At the time when I say this piling was three
 and a half feet out of water at low water, Water street—
 the level of Water street, the low water would be eighteen
 or twenty feet below the level of Water street. I think
 Water street is a little bit higher than the turn-table on
 2198 the bridge. The water would be eight or ten feet below
 the average point of the banks; probably about twelve
 feet below the highest point. I think Water street ought
 to be a little bit higher. I can't name the year of lowest
 water, but there was one year when the water was awful
 2199 low. It was right in the summer time. I couldn't say
 positively the month. I couldn't give that. I don't like
 to answer that at all. I couldn't answer whether that
 2200 year was nearer 1890 than it was 1900. The lowest
 water I have seen since 1900 was last August.

2201 Mr. O'CONOR: Before starting in with Mr. Cooley I would like to offer in evidence House documents, Volume 83, No. 263, report upon the survey of the Desplaines and Illinois River, and the title page thereof, the certificate attached of the colonel of the corps of engineers, acting chief of engineers of the United States, and certificate and seal of Henry L. Stimson, the Secretary of War. Of this document we wish to offer page 187, page 188, and so much of page 189 as relates to the discharge measurements of the Desplaines River and Illinois River, at Morris, Illinois, in the year 1900.

2202 And so much of page 190 as relates to the Illinois River near Devine, Illinois.

And so much of page 191 as relates to the Illinois River near Devine, Illinois, in the years 1903 and 1904. It takes in about two-thirds of the page from the top down.

Discharge measurements of Illinois and Des Plaines rivers—Continued.

ILLINOIS RIVER AT PEORIA, ILL.

[Survey of Illinois and Des Plaines rivers, 1902-1904. The gauge readings refer to gauge on Peoria and Pekin Union Railway bridge. Elevation of zero=435.53, Memphis datum.]

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1901.	<i>Fect.</i>	<i>Sq. ft.</i>	<i>Fect.</i>	<i>Fect.</i>	<i>Fect.</i>	<i>Cu. ft.</i>		
July 2	8.0	3,764	13.0	460	1.77	6,672	Stationary..	No wind (taken from cable at mouth of Farm Creek).
July 11	8.2	3,708	13.0	420	1.80	6,670	do.....	Light upstream wind (taken from cable at mouth of Farm Creek).
June 18	9.9	4,676	15.0	460	1.94	9,065	do.....	No wind (taken from cable at mouth of Farm Creek).
June 10	11.4	5,432	16.6	475	2.38	12,939	do.....	Light downstream wind (taken from cable at mouth of Farm Creek).
May 27	11.9	6,018	17.2	475	2.44	14,662	do.....	Do.
May 13	13.8	6,683	19.2	600	2.73	18,254	do.....	Heavy upstream wind (taken from cable at mouth of Farm Creek).
Apr. 22	15.8	16,275	23.8	1,020	1.87	30,456	Falling.....	Light upstream wind (taken from Peoria and Pekin Union Railway bridge).
Apr. 21	16.0	16,498	23.8	1,020	2.02	33,306	do.....	Strong downstream wind (taken from Peoria and Pekin Union Railway bridge).
Mar. 22	18.8	17,916	26.0	1,020	3.21	57,538	Rising.....	Light downstream wind (taken from Peoria and Pekin Union Railway bridge).
Ma. 23	19.3	17,819	26.0	1,020	3.33	59,333	do.....	Strong downstream wind (taken from Peoria and Pekin Union Railway bridge).

NOTE.—All but last four of above measurements are the means of two consecutive measurements. All were taken with a Price current meter, large size.

ILLINOIS RIVER AT PEORIA, ILL.

[Taken under the direction of the United States Geological Survey. The gauge readings refer to gauge at the Peoria and Pekin Union Railway bridge. Elevation of zero=435.53, Memphis datum.]

1903.								
Aug. 22	8.40	7,218	.....	.....	1.21	8,713	.....	
Nov. 12	9.00	8,046	.....	.....	1.14	9,135	.....	
July 5	9.33	7,766	.....	.....	1.18	9,424	.....	
Oct. 23	10.10	9,699	.....	.....	1.41	13,686	.....	
Sept. 25	11.92	9,987	.....	.....	1.52	15,154	.....	
1904.								
May 13	12.67	11,073	.....	947	1.39	15,358	Stationary..	No wind.
May 18	13.21	11,833	.....	950	1.43	16,912	.....	
Mar. 3	14.94	13,297	.....	953	1.75	23,285	Rising.....	
1903.								
Apr. 3	15.23	13,713	.....	951	1.88	25,840	do.....	Strong downstream wind.
1904.								
Feb. 4	15.42	13,639	.....	933	1.20	16,305	Stationary..	Do.
1903.								
Apr. 29	15.50	13,712	.....	956	1.90	26,079	do.....	Strong upstream wind.
1904.								
Apr. 24	15.70	14,076	.....	947	1.96	27,588	.....	Light upstream wind.
May 1	16.00	14,460	.....	952	2.16	31,315	.....	Do.
Jan. 30	16.33	14,875	.....	943	1.58	21,124	Falling.....	Strong upstream wind.
Feb. 14	16.33	14,815	.....	955	1.50	21,784	Stationary..	Strong downstream wind.
1903.								
Mar. 18	17.58	15,738	.....	956	2.62	41,219	Rising.....	Strong upstream wind.
1904.								
Apr. 16	18.00	16,869	.....	953	2.46	41,460	.....	Light downstream wind.
Apr. 9	19.66	18,568	.....	953	2.87	52,367	.....	Strong downstream wind.
Apr. 7	20.12	19,031	.....	953	2.71	51,558	.....	Light upstream wind.
Apr. 2	21.17	19,313	.....	953	2.17	41,964	.....	Strong upstream wind.
Mar. 31	21.48	20,253	.....	953	2.21	44,808	.....	
Mar. 28	21.83	19,979	.....	953	2.93	58,370	.....	

NOTE.—All measurements were taken from the Peoria and Pekin Union Railway bridge with a small Price current meter.

Discharge measurements of Illinois and Des Plaines rivers—Continued.

ILLINOIS RIVER AT HENRY, ILL.

[Survey of Illinois and Des Plaines rivers, 1902-1904. The gauge readings refer to lower gauge at the lock. Elevation of zero=436.64, Memphis datum.]

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1904.	<i>Feet.</i>	<i>Sq. ft.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Cu. ft.</i>		
Aug. 4	8.0	6,295	20.9	520	1.13	7,134	Stationary..	Light upstream wind (taken from cable about 1,000 feet below bridge).
July 5	8.5	6,348	21.5	520	.99	6,299	do.....	No wind (taken from cable about 1,000 feet below bridge).
June 11	11.0	8,356	24.7	592	1.15	9,612	do.....	Do.

ILLINOIS RIVER AT LASALLE, ILL.

[Taken under the direction of the United States Geological Survey. The gauge readings refer to gauge at the highway bridge over river. Elevation of zero = 587.08, Memphis datum.]

1903.								
Aug. 23	-140.03	7,152	.....	.....	1.04	7,448	.....	
July 7	-139.85	7,342	.....	.....	.98	7,221	.....	
May 12	-136.50	9,345	.....	657	1.18	11,111	Stationary..	
Apr. 4	-133.60	11,281	.....	690	1.56	17,639	do.....	No wind.
Apr. 28	-132.55	11,805	.....	658	1.51	17,884	do.....	Do.
Mar. 17	-129.74	14,187	.....	692	2.26	32,006	Falling.....	Do.

NOTE.—All measurements were taken from highway bridge with a small Price current meter.

ILLINOIS RIVER AT OTTAWA, ILL.

[Taken under the direction of the United States Geological Survey. The gauge readings refer to gauge at Chicago, Burlington and Quincy Railroad bridge. Elevation of zero = 587.05, Memphis datum.]

1903.								
Aug. 23	-129.57	2,924	.....	.....	2.62	7,668	.....	
July 8	-129.54	2,847	.....	.....	3.00	7,541	.....	
Nov. 12	-129.00	3,090	.....	.....	2.56	8,898	.....	
May 12	-128.42	3,511	.....	545	3.32	11,616	Rising.....	Light downstream wind.
Sept. 25	-128.35	3,466	.....	.....	3.35	11,592	.....	
1904.								
May 19	-128.10	3,583	.....	.....	3.29	11,754	.....	Downstream wind.
1903.								
Oct. 12	-127.88	3,609	.....	.....	3.75	13,543	.....	
Apr. 5	-126.25	4,738	.....	599	3.71	17,573	Rising.....	Strong downstream wind.
Apr. 28	-126.07	5,001	.....	609	3.67	18,340	Falling.....	Strong upstream wind.
1904.								
May 2	-125.80	4,775	.....	609	3.90	18,610	.....	Light downstream wind.
Apr. 17	-125.40	5,164	.....	627	3.62	18,714	Stationary..	Strong upstream wind.
Apr. 26	-123.90	6,136	.....	652	4.20	25,920	.....	Strong downstream wind.
1903.								
Mar. 18	-122.98	6,818	.....	651	4.53	30,885	Rising.....	No wind.
1904.								
Mar. 30	-118.30	10,217	.....	746	4.56	46,561	.....	Strong downstream wind.
Apr. 2	-117.30	10,987	.....	751	4.96	54,473	Stationary..	Light upstream wind.

NOTE.—All measurements were taken from Chicago, Burlington and Quincy Railroad bridge with a small Price current meter

Discharge measurements of Illinois and Des Plaines rivers—Continued.

ILLINOIS RIVER AT OTTAWA, ILL.

[Survey of Illinois and Des Plaines rivers, 1899-1900. The gauge readings refer to gauge on highway bridge. Elevation of zero=454.74, Memphis datum.]

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1900.	<i>Feet.</i>	<i>Sq. ft.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Cu. ft.</i>		
May 8	3.25	4,221	.....	.....	2.09	8,805	Rising.....	
Do...	3.38	4,196	.....	.....	2.21	9,280	...do.....	
May 12	3.45	4,337	.....	.....	2.17	9,415	Stationary..	
May 9	3.55	4,410	.....	.....	2.23	9,833	...do.....	
May 11	3.74	4,508	.....	.....	2.21	9,955	...do.....	
Apr. 16	4.33	4,897	.....	.....	2.39	11,745	...do.....	
Apr. 12	4.38	4,940	.....	.....	2.39	11,802	...do.....	
Apr. 25	4.52	4,998	.....	.....	2.67	13,343	...do.....	
Do...	4.52	4,998	.....	.....	2.67	13,343	...do.....	
Apr. 23	4.63	5,106	.....	.....	2.57	13,133	Falling.....	
Apr. 17	4.65	5,119	.....	.....	2.61	13,172	Rising.....	
Apr. 12	4.70	5,124	.....	.....	2.67	13,678	...do.....	
Apr. 18	5.10	5,355	.....	.....	2.66	14,205	...do.....	
Apr. 21	5.20	5,482	.....	.....	2.74	14,992	Falling.....	
Apr. 11	5.30	5,531	.....	.....	2.67	14,614	...do.....	
Apr. 19	5.68	5,773	.....	.....	2.88	16,599	Rising.....	
Apr. 20	5.69	5,800	.....	.....	2.86	16,585	...do.....	
Apr. 9	6.22	6,147	.....	.....	2.97	18,243	Falling.....	
Apr. 7	6.94	6,650	.....	.....	3.09	20,477	...do.....	
Apr. 6	7.25	6,881	.....	.....	3.13	21,505	...do.....	

NOTE.—All measurements were taken from the highway bridge with a large Price current meter.

Discharge measurements of Fox River:

AT OTTAWA, ILL.

[Survey of Illinois and Des Plaines rivers, 1899-1900. The gauge readings refer to gauge at discharge section. Elevation of zero=456.33, Memphis datum.]

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1900.	<i>Feet.</i>	<i>Sq. ft.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Cu. ft.</i>		
Apr. 18	3.12	1,547	.....	.....	1.41	2,173	.....	Water backing up from Illinois River.
Apr. 12	3.14	1,547	.....	.....	1.31	2,032	.....	Meter out of order.
May 9	3.21	1,356	.....	.....	.99	1,345	.....	Do.
May 10	3.22	1,358	.....	.....	.81	1,094	.....	Do.
Apr. 23	3.37	1,585	.....	.....	1.07	1,697	.....	
May 11	3.38	1,387	.....	.....	.65	903	.....	
Apr. 21	3.66	1,643	.....	.....	1.19	1,949	.....	Water backing up from Illinois River.
Apr. 20	4.22	1,747	.....	.....	1.28	2,227	.....	Do.
Apr. 19	4.02	1,692	.....	.....	1.31	2,230	.....	Do.
Apr. 9	4.70	1,848	.....	.....	1.39	2,568	.....	
Apr. 7	5.45	2,003	.....	.....	1.42	2,835	.....	

NOTE.—All measurements taken from Main Street Bridge with a large Price current meter.

ILLINOIS RIVER AT MORRIS, ILL.

[Taken under the direction of the Sanitary District of Chicago. The gauge readings refer to gauge at the highway bridge. Elevation of zero= 487.95, Memphis datum.]

1892.							
July 13	3.02	4,624	.....	.....	1.67	7,738	.....
Do...	3.48	4,917	.....	.....	1.84	9,061	.....
Do...	3.50	4,945	.....	.....	1.88	9,273	.....
July 12	3.65	4,987	.....	.....	1.78	8,883	.....
Do...	3.80	5,063	.....	.....	1.82	9,234	.....
July 11	3.97	5,213	.....	.....	1.94	10,132	.....
Do...	4.00	5,204	.....	.....	1.94	10,089	.....
Do...	4.07	5,289	.....	.....	2.00	10,560	.....
July 2	4.55	5,474	.....	.....	2.02	11,036	.....
Do...	4.60	5,516	.....	.....	2.08	11,461	.....
July 9	4.87	5,857	.....	.....	2.12	12,439	.....
Do...	4.90	5,890	.....	.....	2.12	12,460	.....
Do...	4.97	5,835	.....	.....	2.12	12,376	.....
July 8	5.35	6,020	.....	.....	2.22	13,378	.....
Do...	5.37	6,081	.....	.....	2.30	13,971	.....
Do...	5.42	6,117	.....	.....	2.31	14,134	.....
Do...	5.52	6,158	.....	.....	2.30	14,182	.....
Do...	5.60	6,195	.....	.....	2.23	13,798	.....
July 7	6.02	6,466	.....	.....	2.30	14,867	.....
Do...	6.05	6,435	.....	.....	2.36	15,175	.....
Do...	6.12	6,481	.....	.....	2.30	14,890	.....
Do...	6.22	6,566	.....	.....	2.30	15,079	.....
Do...	6.30	6,711	.....	.....	2.37	15,916	.....
Do...	6.37	6,693	.....	.....	2.36	15,801	.....
July 6	7.00	7,031	.....	.....	2.43	17,056	.....
Do...	7.02	7,116	.....	.....	2.46	17,529	.....
Do...	7.15	7,231	.....	.....	2.60	18,764	.....
Do...	7.31	7,251	.....	.....	2.46	17,843	.....
Do...	7.36	7,375	.....	.....	2.51	18,498	.....
Do...	7.47	7,387	.....	.....	2.48	18,321	.....
May 13	8.36	8,517	.....	.....	2.67	22,767	.....
Do...	8.38	8,489	.....	.....	2.78	23,607	.....
Do...	8.40	8,457	.....	.....	2.78	23,491	.....
Do...	8.41	8,493	.....	.....	2.88	24,491	.....
Do...	8.46	8,535	.....	.....	2.79	23,848	.....
May 12	8.60	8,625	.....	.....	2.83	24,364	.....
Do...	8.63	8,694	.....	.....	2.72	23,661	.....
July 5	8.65	8,154	.....	.....	2.71	22,114	.....
May 12	8.66	8,668	.....	.....	2.71	23,467	.....
Do...	8.72	8,531	.....	.....	2.78	23,744	.....
Do...	8.76	8,730	.....	.....	2.78	24,275	.....
Do...	8.81	8,761	.....	.....	2.79	24,436	.....
July 5	8.82	8,172	.....	.....	2.81	22,929	.....
May 12	8.89	8,916	.....	.....	2.75	24,545	.....
July 5	9.00	8,268	.....	.....	2.73	22,533	.....
May 11	9.33	9,099	.....	.....	2.77	25,204	.....
Do...	9.40	9,132	.....	.....	2.79	25,513	.....
Do...	9.46	9,171	.....	.....	2.70	24,768	.....
Do...	9.57	9,217	.....	.....	2.73	25,135	.....
Do...	9.66	9,230	.....	.....	2.85	26,344	.....
Do...	9.77	9,406	.....	.....	2.77	26,030	.....

Discharge measurements of Illinois and Des Plaines rivers—Continued.

ILLINOIS RIVER AT MORRIS, ILL.—Continued.

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1892.	<i>Feet.</i>	<i>Sq. feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Cu. ft.</i>		
May 10	9.95	9,505	.....	.....	2.79	26,532	.....	
Do...	9.95	9,499	.....	.....	2.78	26,446	.....	
Do...	9.98	9,523	.....	.....	2.82	26,858	.....	23 cubic feet of total discharge was over bottom.
Do...	10.00	9,587	.....	.....	2.77	26,564	.....	27 cubic feet of total discharge was over bottom.
Do...	10.05	9,533	.....	.....	2.72	26,013	.....	52 cubic feet of total discharge was over bottom.
Do...	10.22	9,617	.....	.....	2.91	28,029	.....	58 cubic feet of total discharge was over bottom.
May 9	11.05	10,236	.....	.....	3.03	31,116	.....	113 cubic feet of total discharge was over bottom.
Do...	11.21	10,265	.....	.....	2.93	30,166	.....	122 cubic feet of total discharge was over bottom.
Do...	11.31	10,351	.....	.....	3.04	31,599	.....	128 cubic feet of total discharge was over bottom.
Do...	11.68	10,555	.....	.....	3.07	32,598	.....	148 cubic feet of total discharge was over bottom.
July 3	11.75	9,907	.....	.....	3.27	32,860	.....	
May 9	11.90	10,763	.....	.....	3.12	33,756	.....	158 cubic feet of total discharge was over bottom.
July 3	12.05	10,278	.....	.....	3.30	33,870	.....	
Do...	12.57	10,631	.....	.....	3.47	36,873	.....	
July 4	12.67	10,719	.....	.....	3.13	33,526	.....	
July 3	12.82	10,619	.....	.....	3.40	36,073	.....	
July 4	12.90	10,861	.....	.....	3.24	35,216	.....	
May 9	12.32	11,035	.....	.....	3.15	34,935	.....	181 cubic feet of total discharge was over bottom.
May 8	13.85	12,208	.....	.....	3.30	41,037	.....	773 cubic feet of total discharge was over bottom.
Do...	14.12	12,389	.....	.....	3.32	42,466	.....	1,377 cubic feet of total discharge was over bottom.
Do...	14.77	12,682	.....	.....	3.14	43,202	.....	3,414 cubic feet of total discharge was over bottom.
Do...	15.15	13,078	.....	.....	3.25	47,291	.....	4,796 cubic feet of total discharge was over bottom.
May 7	17.40	14,677	.....	.....	2.97	60,394	.....	16,743 cubic feet of total discharge was over bottom.
Do...	17.75	14,870	.....	.....	3.07	62,313	.....	Do.
Do...	18.27	15,214	.....	.....	2.94	65,790	.....	20,997 cubic feet of total discharge was over bottom.
May 6	18.58	15,449	.....	.....	3.01	67,680	.....	Do.
Do...	19.55	16,079	.....	.....	3.06	73,730	.....	24,614 cubic feet of total discharge was over bottom.

NOTE.—Where a discharge over the bottom is shown, the areas and velocities given are for main channel only.

ILLINOIS RIVER NEAR DIVINE, ILL.

[Survey of Illinois and Des Plaines rivers, 1902-1904. The gauge readings refer to gauge on Elgin, Joliet and Eastern Railroad bridge. Elevation of zero=587.20, Memphis datum.]

1904.								
June 15	-94.6	4,313	9.8	565	1.23	5,300	Stationary..	No wind (taken from cable about 600 feet below Elgin, Joliet and Eastern Railroad bridge).
July 23	-94.5	4,353	9.7	575	1.22	5,304	do.....	Light downstream wind (taken from cable about 600 feet below Elgin, Joliet and Eastern Railroad bridge).
July 8	-94.3	4,337	9.7	560	1.36	5,910	do.....	Light upstream wind (taken from cable about 600 feet below Elgin, Joliet and Eastern Railroad bridge).

NOTE.—Each of the above measurements is the mean of two consecutive measurements. All were taken with a Price current meter, large size.

DES PLAINES RIVER AT THE KANKAKEE CUT-OFF.

[Taken under the direction of the United States Geological Survey. The gauge readings refer to gauge at discharge section. Elevation of zero=587.16, Memphis datum.]

1903.								
Nov. 25	-86.95	3,938	.....	.....	1.30	5,138	Stationary..	
May 9	-86.93	3,920	.....	307	1.30	5,078	do.....	
Aug. 30	-86.75	4,029	.....	373	1.43	5,753	do.....	
July 11	-86.75	3,968	.....	337	1.44	5,713	do.....	
Oct. 28	-86.70	4,033	.....	.....	1.44	5,790	do.....	
Apr. 9	-86.61	4,091	.....	370	1.43	5,483	Rising.....	Strong upstream wind.
Sept. 26	-86.55	3,845	.....	.....	1.46	5,621	Stationary..	
Apr. 26	-86.10	4,284	.....	372	1.43	6,139	do.....	
Dec. 17	-85.60	4,354	.....	322	1.54	6,956	do.....	Ice on both shores.
Mar. 15	-83.59	5,199	.....	382	1.66	8,646	Falling.....	No wind.

NOTE.—All the measurements were taken from a cable with a small Price current meter.

2203 Mr. CHIPERFIELD: I want to object, first, that no proper foundation is laid first for the admission of the book.

2205 Mr. CHIPERFIELD: Well, I simply object that it is incompetent, irrelevant and immaterial, and I think I will let it go at that.

The COURT: I think I will let it go in.

Defendant excepts.

E. L. COOLEY, a witness called by the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is E. L. Cooley. I live in Chicago. I am a civil engineer for the Sanitary District; have been connected with the Sanitary District of Chicago since 1904,
 2207 in May. I am here in answer to a subpoena served on me yesterday. I received the subpoena and I assumed I had no volition in the matter—I had to come. I was not able to consider it in any other way. I naturally am not in sympathy with suits against the Sanitary District, but I didn't suppose I had any choice about it, so I came
 2208 along. I checked up the data that appears on the subpoena that was given me yesterday. There are two small corrections there, only a few feet. They don't amount to anything. I don't have the flow measurements of the
 2209 District from the year 1908, including that year, down to the present time, 1912, inclusive. I couldn't bring them. The observations have not been worked up. There is a great deal of labor in working up these exhibits. There are readings in various places and I used, in the four or five years I worked it up, it took me over a
 2210 month a year to work it up. The readings for the year 1908 have not been worked up so far as I know.

Q. If they were worked up who, in the employ of the District, did the work? A. Why, this is turned over to

the electrical department. They opened their plant in 1908 and those gate readings and that class of work is now under that department, so I have little or nothing to do with it.

When it was under my direction we took readings every half hour, forty-eight readings per day, and the average was worked up for those forty-eight readings. The average is shown on the data attached to the subpoena. They simply show the average flow during the quarter. They don't show the daily flow or just how much is flowed on any day. The data does not show the flow on any day. No, it goes by quarters. The data doesn't show for any one month. The data for the year 1909 has not been made up at this time. We have no tabulations since 1907. Nobody has worked it up. I used to do that, but I have been doing other work. That is in the electrical department and they have not worked it up. There is nobody there that has the duty of tabulating the flow and working it up into an average. That was one of my regular duties up to the year 1904 and then I got busy at other work and these readings came in and nobody worked them up. In 1905, 1906 and 1907, they were worked up by another man, who had some help, that was available to do it. Since then there has been no record worked up that I know of, no continuous record.

Q. Now, do you know when they first commenced to use the gates at Lockport for the purpose of letting the water out of the channel? A. Yes, sir.

Q. When?

Mr. CHIPERFIELD: Now, if your Honor please, I object to this line of examination for the reason the deposition of this witness was taken and I insist they cannot use both his deposition and his oral testimony, concerning the same subject-matter.

Objection overruled; defendant excepts.

Mr. O'CONOR: Q. In the year 1905 was your deposition taken, Mr. Cooley?

Mr. CHIPERFIELD: Then, if your Honor please, I desire now at the first opportunity to move to strike the deposition of E. L. Cooley upon all the matters concerning which he is orally interrogated concerning at this time.

2215 The gates located at Lockport may have been used for the purpose of letting the water out of the District channel. I don't remember. Yes, I have been there since 1905. I don't go there very often; once or twice in the past year or two. They don't use the gates as a rule. They most always use the bear trap dam and since the water power has come into use it is usually taken at the side of the water power, going through the wheels on the water power and over the dams at that place.

Q. Have you any additional gates there that you didn't have when your deposition was taken in the year
2216 1905? A. I don't remember that deposition of 1905.

Yes, there are two gates down at the water power which went into use in 1908. They are about two miles below bear trap dam.

Q. Now, since the year 1905, has the Sanitary District of Chicago constructed a channel along Thirty-ninth street in the City of Chicago? A. That, I believe, was done by the City of Chicago.

Q. Is it a part of the Sanitary District? A. No, no.

It begins in the lake and discharges into the Halsted street slip, or sometimes called the stock yards slip, which is a slip on the south branch of the Chicago River. That
2217 fork joins in near Ashland avenue, which is east of Robey street, about half a mile; about half a mile up stream from Robey.

Q. What is the capacity of that channel or conduit, as you call it?

Objected to by the defendant; objection overruled; defendant excepts.

2218 Ultimately that water flows through that Thirty-ninth street conduit into the Sanitary District channel.

Q. Ultimately, yes; and doesn't it go into the channel at a point in the river where it won't affect the shipping in the river itself?

Defendant objects as immaterial; objection overruled; defendant excepts.

Q. Doesn't that come into the channel or come into the Chicago River at a point where it won't affect the shipping in the river?

2219 Defendant objects as immaterial; objection overruled; defendant excepts.

A. Oh, it doesn't affect the shipping. The velocities in that branch are very low. It doesn't affect navigation.

Q. What is the capacity of that Thirty-ninth street conduit?

Objected to as being incompetent. (Argument on
2220 the objection.)

2221 Objection overruled; defendant excepts.

2222 A. Why, by gravity, with the usual difference added between Lake Michigan and the outflow, it may be forty or fifty thousand. It might be nothing, depending on the flow in the river. If there is no flow in the river there is no flow in the conduit.

Q. I am asking you what is its capacity?

Objected to by the defendant.

A. Capacity depends on the slope through the conduit and the stage of the river and the stage of the lake determines the flow, by gravity through the conduit.

Q. What is the ultimate capacity or maximum capacity through the conduit?

Mr. CHIPERFIELD: If your Honor please, I object to it.

The COURT: He may answer the question.

Mr. CHIPERFIELD: May I be heard very briefly?

The COURT: If there is anything new.

Mr. CHIPERFIELD: There is something new.

The COURT: That is, anything additional. I don't care to hear what you have already said, Mr. Chiperfield, but if there is anything new, I will hear it.

Mr. CHIPERFIELD: Your Honor, I don't usually indulge
2223 in remarks just for the sake of exercise. I get plenty of that during the day, and, your Honor, it is a matter of right for counsel to be respectfully heard by the court; it is not a matter of favor.

Here is a conduit running from the lake down to the Chicago River. The size of the conduit is not, as I remember, in the evidence.

The COURT: He hasn't had a chance to testify to very much about it, yet.

Mr. CHIPERFIELD: He is not going to testify very much about it unless it is over my objection.

The COURT: You have a right to object, but he may have a chance to answer without so much argument. I don't say he will have a right to answer the questions without your objections, but I do say he may have a right to answer the questions without so much argument each time.

Mr. CHIPERFIELD: I object to the remarks of the court, and, if your Honor please, I refer you to the case of Curran against the Sanitary District, where the court says it is the absolute right of counsel to respectfully present their objections and to present arguments to the court.

The COURT: If you have anything to say on the question, you may say it, but I don't care to hear anything further said by you as to the propriety of the counsel and the court.

2224 Mr. CHIPERFIELD: I want to present that authority. May I present that authority?

The COURT: No, sir; you may address yourself to the question.

Mr. CHIPERFIELD: I ask leave to present that authority to the court.

The COURT: I overrule your motion.

Defendant excepts.

The COURT: I still think you may answer the question.

Defendant excepts.

2225 There is no fixed capacity to that conduit. It varies with the hydraulic conditions. It has been estimated and I have not followed it since, that by gravity it would take a flow of forty to sixty thousand cubic feet per minute from Lake Michigan into the stock yards slip. That all depends on the slope through the conduit. It is about two miles long.

Q. Now, since you testified in 1905, at the time the depositions were taken, has the District widened the Chicago River? A. There has been widening in places.

Mr. CHIPERFIELD: I want to make the same objection, if your Honor please, and I want to be briefly heard on it.

The COURT: I deny the request to be heard. I overrule the objection. You may answer the question.

Defendant excepts.

A. There has been widening in places going on quite a number of places, almost continuously since the work 2226 was begun.

Q. Since the year 1905, how much has the Chicago River been widened?

Mr. CHIPERFIELD: If your Honor please, I desire to object as incompetent, irrelevant and immaterial, and I desire to be briefly heard on the objection.

The COURT: I think I will overrule the motion and request.

Defendant excepts.

A. I don't know specifically. The work is not in my charge. I have just common knowledge that work is going on here and there, but I don't keep track of it.

Q. Now, why, Mr. Cooley, has the District been widening the Chicago River since that time?

Mr. CHIPERFIELD: I object to it as incompetent, irrelevant and immaterial, and I desire to be briefly heard on the objection.

The COURT: The witness may answer the question.

Defendant excepts.

Mr. CHIPERFIELD: Is my request to be heard denied?

The COURT: Yes, sir.

Defendant excepts.

2227 A. My understanding is there were some bad points in the Chicago River which were obstructions to navigation and it was largely on that account.

Q. Now, since the year 1905 has the Sanitary District constructed any other channel for the purpose of bringing into the Chicago River, or the channel proper, any additional sewage?

Mr. CHIPERFIELD: I desire to object, if your Honor please, on the ground that the contemplated work is not embraced within the declaration or the pleadings of this case and I desire to be briefly heard upon the proposition.

The COURT: Well, if you have anything in addition to what you have already said to the court, I will be very glad to hear you, but I don't care to have a repetition of what you have already said. I will hear you for a few minutes.

Mr. CHIPERFIELD: Two minutes to present this declaration.

The COURT: I didn't say two minutes, sir. I said a few minutes. Everybody understood me, I think, except you, as to what I said:

Mr. CHIPERFIELD: I except to the remark of the court.

2228 Defendant excepts.

2229-2230 (Argument on objection.)

Objection overruled; defendant excepts.

2232 Mr. O'CONOR: Q. Have you constructed, since 1905, what is known as the Evanston channel?

A. It is called the North Shore channel.

Q. Where does that—through what territory does that run? A. Why, it starts from Lake Michigan, in the southeast quarter of Wilmette—

Mr. CHIPERFIELD: Just a minute before you go ahead, please. I want to make the same objection to this line of inquiry, if your Honor please.

The COURT: I will let him answer the question.

Defendant excepts.

A. It starts from Lake Michigan, in the southeast quarter of Wilmette, and passes through the northwest quarter of Evanston and south on the west side of Evanston into the Chicago at Lawrence avenue, where it joins the north branch of the Chicago River.

Q. What, if anything, has the District constructed at Ogden? Have you constructed a dam at Ogden?

Defendant objects.

A. A dam where?

Q. At what is known as the Ogden ditch.

Mr. CHIPERFIELD: If your Honor please, I object to that on the ground, further, that the witness has testified concerning these things in his deposition.

2233 The COURT: I don't recollect whether it is in the deposition or not.

Objection overruled; defendant excepts.

Mr. CHIPERFIELD: I want to make one more motion. If your Honor please, I move to strike the entire deposition in this case, for the reason that the deposition and the oral testimony of a witness cannot both be used in

2234 a suit. I move to strike the deposition of E. L. Cooley, as heretofore read in this case, and exclude same from the consideration of the jury.

Motion overruled; defendant excepts.

Mr. O'CONOR: Q. Have you constructed a dam at the Ogden ditch, Mr. Cooley, that throws the water this way that formerly went towards Lake Michigan?

Mr. CHIPERFIELD: Same objection.

Objection overruled; defendant excepts.

A. Why, we have constructed no dam on what is called the Ogden ditch.

Q. Well, what have you constructed there? A. In
2235 the old days the water sometimes, during high water in the spring, did flow east from Summit into the Ogden ditch, into the south branch of the Chicago River, and then they afterwards built a spillway as a substitute for the Ogden ditch below Riverside, and that spillway has since been leveled off. The right of way of the Sanitary District below the bear trap dam in the bottom of the Desplaines has no specific width. It varies with the
2236 tract of land and converges; I could not say. I don't know the width of it. I have no particular recollection of it. There are no fences there to show. I never looked it up to my knowledge. I don't remember of ever testifying as to the width of the right of way. I have no recollection of any such testimony in the Smith case concluded
2237 in Bureau County this week. I know at the south end of it there is a strip, but I don't know the exact width. I couldn't tell until I looked on the right of way map. I don't know whether it is more or less than a thousand feet. Everything is supposed to be included in the esti-
2238 mate of the flow. At the time I made the tabulations there were no wheel pits there. I don't know specifically just how they do it down there this year. It is in charge of the electrical department. I don't know any of the

details since the year 1907, just how the measurements are taken there now. It is the intention, I suppose, to
 2239 include everything. No, I don't know the total amount of water that was flowing in the Illinois River at Henry in the year 1904, April 4th, July 5th, and June 11th. I have none of those records in my mind and I have not made a special study of the Illinois River. I am not qualified as an expert on that part of the river, and my knowledge of that part of the river is general. My work has not required me to make a study of that.

2241 This exhibit reads August 4th. It is one day, as far as I can judge. Our exhibit is for the whole quarter, including three months. I could not make a true comparison between those two exhibits. The data is not given here and it is not given in the exhibit. It is given here
 2242 for this one day, but it is not given in the exhibit for one day. The figures on my data are supposed to be the precise average of the twenty-four hours. The flow varied under conditions. Ordinarily the flow was fairly continuous. There might be conditions under which it would change. The flow has been worked out in the form of an average. It would run along day after day where the variations were slight. Of course, the fluctuations of the lake would affect it from day to day and from hour to hour. The flow was never exactly constant. The figures in the averages that I had are a fair average of the
 2243 daily flow, during the period under which I supervised it.

Q. If you take the figures that you had during the quarter that included any day of the month that is given in this government report, and figure the amount of water that was actually flowing through the river as shown by the government report, and then take and deduct from that the amount of flow for the period shown on the subpoena and on the data, you would have a fair

idea, at least, of the quantity of natural water and the quantity of Sanitary water, wouldn't you?

Mr. CHIPERFIELD: I object to the argumentative form of the question.

Objection overruled; defendant excepts.

A. Why, the difference between this flow and the quantity delivered by the Sanitary District, I assume, is what you want?

Q. Yes. A. Why, the exhibit which you have does not contain data by which you can figure the flow on August 4th; it is the average of about ninety days and there might have been extensive variations in the ninety days; I could not say at this time. I do not charge my memory on those things.

2244 As a rule they will flow about a certain amount. The average that is shown on this data is the average for the period. As a rule they will flow about the same amount without there was some reason for changing it from year to year. I don't remember those things. I would have to look it up.

Q. I will put it this way. During any quarter would there be any great variation? A. There might; might be some reason for it which did not appear in the record.

2245 If there was no reason for it I would not expect it. There might be conditions where they would reduce the flow for a period or might increase it for a period. There is no fixed rule about that. Sometimes it was the word of the president. The president of the District would say do so, change it, without any engineering reason. If you take the difference during the months of July and August in the year 1904 of the water flowing into the Illinois River, and then having deducted the average from July 2d to October 1st from the gross quantity of water, you would get a fair approximation of the quantity of natural water that was flowing, and the quantity

of Sanitary District water; but they would have to be the same period. I wouldn't say you could take one period and compare it with another period. You have to cover the exact interval. I could not say you could compare two intervals, not the same, and get a fair approximate difference, because during one interval, different from any other interval, conditions might have been radically different. The question is too general to be answered in any other way.

Q. If we take the flow as shown on the government's survey on the 4th of April, 28th of April, 12th of May, and 7th of July, and then take your data as to the flow of the river during the months of March, April, May, June, July and September, couldn't we approximately determine the natural water and the amount of Sanitary water? A. I would not say that you could from those differences get a fairly accurate flow, average flow on the given day, because we don't know what the flow on that day was through the district. Your record may show what it was in the river at that time, but we did have considerable variations of flow at times.

2248 For some years the president of the Board would sometimes direct the flow that we should flow. He had his reasons, which were not always engineering reasons, and I could not say what his reasons were at that time; it has passed; it is a past event and there was nothing to fix it in my mind. There might be a period of a year or two when the variations were slight. On the other hand, there might be considerable variation, for some reason, which did not appear in the record. At the present time
2249 I assume they are maintaining an average in a way. I am not keeping track of them. Some matters of detail are somewhat different at the present time than from the years 1903 down to the year 1907. Under present conditions the flow is not uniform for twenty-four hours.

They take more at some times than others, because they are using a lot of water through the wheels for water power and that makes a variation in itself. Now, whether they so manipulate the dam so as to make the flow uniform for the twenty-four hours, that is what I am not prepared to state. At certain times water would go through the wheels and at other times they could flow water over the dam which they could very well maintain a fairly uniform flow, but whether they do or not I am
 2250 not prepared to say. Well, yes, I will leave the sub-
 2251 poena with the court reporter.

2252 Subpoena from the Circuit Court of La Salle County commanding E. L. Cooley to appear in said cause on the 21st day of November, 1912, and to bring with him certain tabulations of flow. Subpoena dated November 19, 1912.

Mr. O'CONOR: Well, I will have this marked as an exhibit.

Whereupon said document was introduced in evidence by the plaintiff and marked Exhibit 14 and is in words and figures following:

2254 Tabulations of flow, showing flow of the Sanitary District by quarters from 1900 to the end of 1907.

EXHIBIT 14.

PERIOD.		Average Discharge. C. F. M.
1900—10 Weeks	January 17th to March 31st	144266
2nd Quarter	April 1st to June 30th	183729
3rd Quarter	July 1st to September 29th	184406
4th Quarter	September 30th to December 29th	230020
Yearly	January 17th to December 29th	188136
49 Wks.		
1901—1st Quarter	December 30th to March 30th	303667
2nd Quarter	March 31st to June 29th	210574
3rd Quarter	June 30th to September 28th	218560
4th Quarter	September 29th to December 28th	236490
52 Wks. Year		242323
1902—1st Quarter	December 29th to March 29th	252592
2nd Quarter	March 30th to June 28th	248078
3rd Quarter	June 29th to September 27th	256122
4th Quarter	September 28th to December 27th	271232
52 Wks. Year		257006
1903—1st Quarter	December 28th to March 28th	344890
2nd Quarter	March 29th to June 27th	280495
3rd Quarter	June 28th to September 26th	276194
4th Quarter	September 27th to January 2nd	295881
53 Wks. Year		299299
1904—1st Quarter	January 3rd to March 25th	323536
2nd Quarter	April 3rd to July 2nd	289475
3rd Quarter	July 2nd to October 1st	265289
4th Quarter	October 2nd to December 31st	270841
51 Wks. Year		287285
1905—1st Quarter	January 1st to April 1st	324724
2nd Quarter	April 2nd to July 1st	258537
3rd Quarter	July 2nd to September 30th	255058
4th Quarter	October 1st to December 30th	236495
52 Wks. Year		268703
1906—1st Quarter	December 31st to March 31st	268899
2nd Quarter	April 1st to June 30th	274245
3rd Quarter	July 1st to September 29th	221310
4th Quarter	September 30th to December 29th	306112
52 Wks. Year		267641
1907—1st Quarter	December 30th to March 30th	314951
2nd Quarter	March 31st to June 29th	310096
3rd Quarter	June 30th to September 28th	333503
4th Quarter	September 29th to December 28th	270195
52 Wks. Year.		307186

2255 *Cross-Examination by Mr. Chipperfield.*

I am the same E. L. Cooley who gave my deposition in the case of the La Salle County Carbon Coal Company against the Sanitary District of Chicago, taken on the 2256 25th day of April, 1905. These averages in Exhibit 14, which I have introduced at the request of counsel for the plaintiff, show all the water passing through the controlling works at Lockport. That is, all that passes from Chicago has to go that way. The Sanitary District discharges are included. I do not have charge of this de- 2257 partment at the present time. The address of the man who does have charge of that department is Edward B. Ellicott. He lives in Chicago. I think he came in about 1908. He has been continuously and openly a resident of Chicago since that time. He has an office in the District, on the fifteenth floor of the American Trust Building. He has had his office there ever since they moved from the Security Building. As a rule, he is there habitu- 2258 ally, every day. I cannot say specifically that I have very much knowledge except as a matter of information. I assume they are running about a certain flow. I couldn't testify to that.

Q. What is that flow?

Mr. O'CONOR: I object to the question; not gone into on direct examination.

Objection sustained; defendant excepts.

2259 I entered the service of the Sanitary District in May, 1894. Have been there since then. The channel was not built at that time.

Q. Mr. Cooley, prior to the opening of the channel on the 17th day of January, you may state if there was any connection of this channel with the Chicago River?

A. Why, except that a week before the 17th of January they opened a connection to fill the channel, which was empty.

Before that time there had been nothing in the channel except rain water. There was no flow from the Sanitary District channel into the Illinois River in the summer preceding the 17th day of January. The channel was empty except for rainwater. It was not done; there were places
 2260 in the channel that were not dug out. The channel was shut off at the Pan Handle bridge and there was a diversion channel made from the corner of that cut up by the Bridewell, west of the Pan Handle, and that had been made, all except about fifty feet, more or less, and they cut a trench and built a flume around that thing, I should judge about two weeks before the 17th of January. Before that time there had been no connection of the Sanitary District with the Chicago River or Lake Michigan. The channel was empty at that time except from the rainwater. This Thirty-ninth street conduit which the City of Chicago discharges into the stock yards slip at Thirty ninth and Halsted street, that slip connects with the south fork of the south branch of the Chicago River, which joins it up near Thirty-first street. It directly discharges
 2261 into the south fork of the south branch of the Chicago River. It is about one mile from where the Chicago River connects with the Sanitary District channel. No water is discharged from this Thirty-ninth street conduit into the Illinois River, except as it passes through and over the controlling works. This Thirty-ninth street con-
 2262 duit is merely tributary to the Chicago River. This discharge goes over the controlling works. I don't know that after the Thirty-ninth street conduit was opened into the Sanitary District that the flow would be any greater, by reason of that fact, than it was before. The flow from the conduit never has been very large. It is intended for the relief of certain sewage on the south side. The widening of the Chicago River has increased the flow of the Sanitary District to some extent. For-

merly, on the velocity and stage the Secretary of War had ruled, on the question of navigation, and as these bends were trimmed away and the river straightened, why, we could increase the flow. All the flow is measured over the dam.

Q. Is there any flow, except seepage or leakage, that is not measured on the bear trap dam or at the controlling works? A. Why, that covers everything, including the Desplaines River.

- 2263 The North Shore channel is simply a loop from the lake at one point to the Chicago River, about a mile from the lake at another point. It does not flow directly into the Sanitary District channel. It flows into the north branch of the Chicago River. It must be nearly ten miles from the place where the Chicago River is connected with the Sanitary District channel. It flows into the north branch of the Chicago River. The main channel of the
- 2264 Sanitary District begins about Thirty-first and Ashland or Robey. That is on the south branch. This Thirtyninth street conduit was connected two or three years ago, after we opened our channel. I should think it was before 1905. I don't recall the date. This North Shore channel has been opened since January 14, 1905. This Ogden ditch was constructed away back in the '60s or '70s. Forty years ago, more or less; the Ogden ditch was not constructed by the Sanitary District of Chicago. They did not have anything to do with it, in any way.
- 2265 The dam which I spoke of, that was constructed in the fall and winter of '93. I think it was finished that winter. One of the first works I did after I entered the employ of the Sanitary District in 1894 was to repair the dam. It was practically completed and finished and in use before I went to the Sanitary District in 1894. In the spring of 1894 we put a facing of Portland cement on it. It did not change the hydraulic condition at all. Two or

three years ago we leveled off that spillway and made a
2266 new spillway. I don't think that there was any change
in it before I came.

2267 Q. I wish you would answer my question, please.
From January 14, 1895, down to June 14, 1900, was there
any change of any kind in the Ogden dam, in its character
or its use? A. No.

Q. My question was, was there any change in the
construction of the Ogden ditch from 1895 to 1900? Was
it completed during that period? You went there in
2268 1894? A. No, there was no change.

The City of Chicago built that conduit out of the water
funds, as I understand it. It was built by the City of
2269 Chicago.

(Mr. O'Connor reads to the jury from House Docu-
ments, Volume 83, No. 263.)

2270-2279 Tabulations from said documents.

2280 HOWARD S. HAZEN, a witness called by the plaintiff, re-
sumed the stand:

Direct Examination Continued by Mr. Butters.

The La Salle County Carbon Coal Company has not
in its possession or under its control the plat, a copy of
which is reported on page 24 of this record. I have made
search to ascertain that fact so I can swear positively
2281 on the subject. The La Salle County Carbon Coal Com-
pany has not in its possession the record appearing in
book 300 of the recorder's office of La Salle County, com-
mencing on page 520, about the middle of the page, and
purporting to be proceedings in reference to the will of
Henry Young; commencing at that point and continuing
on pages 521 to 540. I have carefully looked over the
archives.

Mr. BUTTERS: Now, we offer in evidence the plat on page 24 of plat book E of the recorder's office of La Salle County.

2283 Surveyor's certificate to plat, dated July 1, 1887. Acknowledgment of plat by the Illinois Valley Coal Company, by F. O. Wyatt, manager.

2284 Certificate of acknowledgment.

2285 Mr. BUTTERS: And we also offer in evidence the pages commencing, as I stated in my question, on page 520 of book 300, miscellaneous records, in the office of the recorder of deeds in La Salle County, to page 450, inclusive.

Cross-Examination by Mr. Chipfield.

This is a plat appearing in the plat book that has been referred to, of certain lands which were subdivided by the La Salle County Carbon Coal Company. I have
 2286 searched all of our records for it. I personally conducted the search. We keep records in one place. We have no Chicago office. Our records are in the La Salle National Bank, most of them. I have not been able to find this plat. I don't know whether or not the plat is in existence. I don't know what has become of it. I made search for this plat yesterday and Sunday. I don't know how recently, if ever, I had it in my possession. I never
 2287 had in my possession, so far as I know, the copy of the last will of Henry Young. I don't know that I ever had it in my possession. I don't know whether I ever had this plat in my possession. I have no knowledge on either of these points. Further thought would not add anything to that reply. I don't recollect ever having had either of these things in my possession. Either the plat that has been referred to or the last will and testament of Henry Young and the proceedings attending the probating and appointments of executors.

The plat is objected to by the defendant for the reason that no proper or sufficient foundations has been laid; objection overruled; defendant excepts.

Mr. CHIPERFIELD: There is another branch on which I can examine him while we are waiting.

The COURT: About the payment of taxes?

Mr. CHIPERFIELD: Yes.

The COURT: I am satisfied.

2290 I am familiar with the La Salle County Carbon Coal
 'Company's mine No. 1. That mine is now in operation.
 This mine map which is now handed me shows correctly
 the workings of mine No. 1, so far as Section 23 is con-
 cerned. We stopped mining there in 1894, from the north.
 The mine is still working south. It is not working in
 Section 23. The coal that is shown to have been taken
 out in Section 23 was taken out prior to 1894. The lines
 upon this plat, for instance, May, 1907, November, 1907,
 June, 1908, December, 1908, May, 1909, December, 1909,
 each one represents a survey; represents the face of the
 2291 coal on those dates. We have done no mining in 24 from
 May, 1894. There might have been some in there on
 Section 23. I don't know about that; I can't tell you. I
 2292 am familiar with the mine that is known as the Union
 mine. The map which you hand me is a correct map for
 1910, up until July, 1910. I don't see any lines there
 2293 showing Section 21. Those are the workings upon Sec-
 tions 21 and 22 at that time. Those workings have been
 extended maybe 300 feet since. The coal in 21 and 23
 has been taken out within the last five years, I should say.
 I know the mine of the La Salle County Carbon Coal
 Company known as the Rockwell mine. The Rockwell
 2294 mine has been mining coal from Sections 23 and 24. I
 could not make an estimate of how much has been taken
 out on 24, nor on 23, either. I don't know how much has
 been taken out. This map has been corrected up until

May, 1911. Some of the workings have been advanced 2295 150 feet. That map is correct as to Section 24. As you get over on the Illinois River, on 23, they have been extended.

Mr. CHIPERFIELD: I desire to offer, in connection with the evidence of Mr. Hazen, to offer in evidence the exhibits which have been marked for identification 15, 16 and 17, as illustrative of his testimony.

Exh. 15



Exh. 16



5.17



2296 Exhibit 15, blue print of mine No. 1.

2297 Exhibit 16, blue print Union mine.

2298 Exhibit 17, blue print Rockwell mine.

2299 Mr. CHIPERFIELD: Q. Mr. Hazen, you say you have paid taxes upon the property in question?

A. Yes, sir.

Since 1890, twenty-two years. In the tax receipts which I have taken are included other lands than the lands in question. The tax receipts which I have in court pertain to various tracts of land that are included in this suit, together with other lands. They are the original tax receipts.

Mr. CHIPERFIELD: I desire, if your Honor please, to offer so much of the tax receipts as pertain to the land in question, in evidence, in connection with the testimony of Mr. Hazen. No other portion; simply those that pertain to the land in question, and let them be transcribed in the record and returned to Mr. Hazen.

Mr. BUTTERS: We object to them for any other purpose than showing title.

Mr. CHIPERFIELD: It is certainly upon the question of showing title. We are contesting that; and any other proper purpose they may be used for.

Mr. BUTTERS: We object for any other purpose.

Objection overruled.

2301 Mr. CHIPERFIELD: May we regard these as being read, or shall we read them?

The COURT: You may consider them read, as far as the court is concerned.

TABULATION OF TAX RECEIPTS,

above referred to, produced by the plaintiff and offered in evidence by the defendant, said tabulation showing:

1st. The description of the several tracts of land upon which the taxes were paid as said descriptions appear in said tax receipts.

2d. The number of acres embraced in each description as stated in said tax receipts.

3d. The assessed valuation of said several tracts, as shown by said tax receipts.

4th. The amount of taxes paid by the defendant on said several tracts as described therein in each of said several years.

Where the above data is not given, the receipts for said several years were not among the tax receipts produced.

Where the assessed valuations are not given and the amount of taxes paid is given, the valuations were not carried out by the collector in the receipts for such years so omitted.

Where a number of acres different from the number given in the column headed "Acres," appears in brackets in any given year, it indicates that the number of acres so inserted is given in the receipt for that particular year as the number of acres of land embraced in said tract, instead of the number given in the column headed "Acres."

TABULATION.

2303

Description.	Acres.	1885.		1886.		1887.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	\$ 400.00	\$30.40	\$ 400.00	\$ 27.64	\$ 400.00	\$ 30.60
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	2,000.00	149.80	1,500.00	104.19	1,500.00	112.61
Except R. R.		(160-a)		(160-a)		(160-a)	
S. E. $\frac{1}{4}$, 23	152.68	6,000.00	449.38	5,500.00	376.82	5,500.00	412.73
Except R. R.							
W. $\frac{1}{2}$ S. W.		(35-a)		(35-a)		(35-a)	
$\frac{1}{4}$, 24	27.76	3,500.00	262.17	3,000.00	206.41	3,000.00	225.20
S. frac. S. E.							
$\frac{1}{4}$, 22	70.21	700.00	28.60	500.00	21.27	500.00	17.75
N. of river							
S. of canal, 21	76.60	1,514.00	65.70	892.00	35.70	.....	.....
S. frac. of							
N. $\frac{1}{2}$, 21	99.00	1,957.00	73.78	1,802.00	52.83	.....	.....
S. W. frac.							
$\frac{1}{4}$, 21	131.00	2,609.00	98.37	2,403.00	70.45	.....	.....
Frac. S. of river,							
S. E. $\frac{1}{4}$, 21	131.52	2,609.00	98.37	2,403.00	70.45	.....	.....

2304

Description.	Acres.	1888.		1889.		1890.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	.....	21.80	400.00	20.25	.....	20.36
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	.....	81.64	1,500.00	75.97	.....	76.29
Except R. R.		(160-a)					
S. E. $\frac{1}{4}$, 23	152.68	.....	299.34	5,400.00	273.47	.....	274.53
Except R. R.							
W. $\frac{1}{2}$ S. W.		(31.50-a)		(27.66-a)		(27.66-a)	
$\frac{1}{4}$, 24	27.76	.....	163.25	2,900.00	146.87	.....	147.45
S. frac. S. E.							
$\frac{1}{4}$, 22	70.21	.....	14.28	500.00	11.96	.....	13.27
N. of river							
S. of canal, 21	76.60	.....	.....	.....	.....	803.00	21.15
S. frac. of							
N. $\frac{1}{2}$, 21	99.00	.....	.....	.....	.....	1,622.00	42.68
S. W. frac.							
$\frac{1}{4}$, 21	131.90	.....	.....	.....	.....	2,162.00	56.89
Frac. S. of river S. E.							
$\frac{1}{4}$, 21	131.52	.....	.....	.....	.....	2,162.00	56.89

2305

Description.	Acres.	1891.		1892.		1893.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	.....	22.54	.....	.....	.....	.....
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	.....	84.52	.....	.....	.....	.....
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	.....	304.24	.....	.....	.....	.....
Except R. R.							
W. $\frac{1}{2}$ S. W.		(27.66-a)					
$\frac{1}{4}$, 24	27.76	.....	163.38	.....	.....	.....	.....
S. frac. S. E.							
$\frac{1}{4}$, 22	70.21	.....	13.38	.....	.....	.....	.....
N. of river							
S. of canal,							
21	76.60	800.00	30.24	825.00	33.68	905.00	36.12
S. frac. of							
N. $\frac{1}{2}$, 21	99.00	1,617.00	42.55	1,697.00	62.47	1,859.00	54.69
S. W. frac.							
$\frac{1}{4}$, 21	131.90	2,154.00	56.66	2,238.00	82.38	2,454.00	72.17
Frac. S. of							
river S. E.							
$\frac{1}{4}$, 21	131.52	2,154.00	56.66	2,238.00	82.38	2,454.00	72.17

2306

Description.	Acres.	1894.		1895.		1896.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	.....	.....	.....	21.30	318.00	34.29
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	.....	.....	.....	79.74	1,191.00	128.41
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	.....	.....	.....	286.99	4,287.00	462.16
Except R. R.							
W. $\frac{1}{2}$ S. W.							
$\frac{1}{4}$, 24	27.76	.....	.....	.....	154.15	2,302.00	248.19
S. frac. S. E.							
$\frac{1}{4}$, 22	70.21	.....	.....	.....	15.07	397.00	25.99
N. of river							
S. of canal,							
21	76.60	887.00	40.21	887.00	36.93	826.00	48.68
S. frac. of							
N. $\frac{1}{2}$, 21	99.00	1,822.00	66.17	1,822.00	53.42	1,697.00	75.55
S. W. frac.							
$\frac{1}{4}$, 21	131.90	2,406.00	87.35	2,406.00	70.52	2,240.00	99.69
Frac. S. of							
river S. E.							
$\frac{1}{4}$, 21	131.52	2,406.00	87.35	2,406.00	70.52	2,240.00	99.69

2307

Description.	Aeres.	1897.		1898.		1899.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	326.00	27.70	324.00	31.86	349.00	27.84
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	1,222.00	103.77	1,215.00	119.46	1,310.00	104.43
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	4,400.00	373.56	4,374.00	429.99	4,714.00	375.73
Except R. R.							
W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, 24	27.76	2,363.00	200.64	2,349.00	230.92	2,619.00	208.76
S. frac. S. E. $\frac{1}{4}$, 22	70.21	407.00	18.82	405.00	23.83	437.00	18.99
N. of river							
S. of canal 21	76.60	832.00	47.29	802.00	57.61	757.00	44.31
S. frac. of N, $\frac{1}{2}$, 21	99.00	1,707.00	70.18	1,636.00	89.67	960.00	41.01
S. W. frac. $\frac{1}{4}$, 21	131.90	2,252.00	92.56	2,171.00	118.99	1,271.00	54.30
Frac. S. of river S. E. $\frac{1}{4}$, 21	131.52	2,252.00	92.56	2,171.00	118.99	1,271.00	54.30

2308

Description.	Aeres.	1900.		1901.		1902.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	360.00	26.00	360.00	29.60	360.00	27.72
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	1,350.00	97.38	1,350.00	110.98	1,350.00	103.96
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	4,860.00	350.42	4,860.00	399.50	4,860.00	374.22
Except R. R.							
W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, 24	27.76	(27.66-a) 2,700.00	194.67	(27.66-a) 2,700.00	221.94	(24.25-a) 2,700.00	207.90
S. frac. S. E. 70.21	70.21	450.00	14.98	450.00	19.95	450.00	20.94
N. of river							
S. of canal, 21	76.60	632.00	38.32	749.00	40.34	780.00	42.75
S. frac. of N. $\frac{1}{2}$, 21	99.00	802.00	32.18	950.00	37.93	990.00	47.34
S. W. frac. $\frac{1}{4}$, 21	131.90	1,061.00	42.57	1,258.00	50.20	1,310.00	62.62
Frac. S. of river S. E. $\frac{1}{2}$, 21	131.52	1,061.00	42.57	1,258.00	50.20	1,310.00	62.62

2309

Description.	Acres.	1903.		1904.		1905.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	.....	29.64	361.00	33.26	361.00	34.08
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	.....	111.11	1,354.00	124.72	1,354.00	127.77
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	.....	399.85	5,073.00	467.25	5,073.00	478.66
Except R. R.							
W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, 24	27.76	.....	222.13	2,707.00	249.34	2,707.00	255.44
S. frac. S. E. $\frac{1}{4}$, 22	70.21	.....	24.12	451.00	22.66	451.00	21.83
N. of river							
S. of canal, 21	76.60	564.00	39.59	564.00	38.08	564.00	38.92
S. frac. of N. $\frac{1}{2}$, 21	99.00	732.00	40.71	732.00	33.39	732.00	33.68
S. W. frac. $\frac{1}{4}$, 21	131.90	976.00	54.27	976.00	44.51	976.00	44.90
Frac. S. of river, S. E. $\frac{1}{4}$, 21	131.52	976.00	54.27	976.00	44.51	976.00	44.90

2310

Description.	Acres.	1906.		1907.		1908.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	361.00	28.84	40.00	3.15	40.00	3.30
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	1,354.00	108.07	1,720.00	135.20	1,720.00	141.57
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	5,073.00	404.85	5,080.00	399.29	5,080.00	418.09
Except R. R.							
W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, 24	27.76	2,707.00	216.04	2,700.00	212.22	2,700.00	222.21
S. frac. S. E. $\frac{1}{4}$, 22	70.21	451.00	20.63	450.00	21.56	450.00	21.30
N. of river							
S. of canal, 21	76.60	564.00	37.51	532.00	34.59	532.00	33.85
S. frac. of N. $\frac{1}{2}$, 21	99.00	732.00	31.77	693.00	31.41	693.00	30.92
S. W. frac. $\frac{1}{4}$, 21	131.90	976.00	42.36	922.00	41.78	922.00	41.14
Frac. S. of river, S. E. $\frac{1}{4}$, 21	131.52	976.00	42.36	922.00	41.78	922.00	41.14

Description.	Acres.	1909.		1910.		1911.	
		Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.	Assessed Value.	Taxes Paid.
W. 48.75 a							
S. of river							
N. W. $\frac{1}{4}$, 23	48.75	67.00	3.47	67.00	3.33	67.00	3.58
Except R. R.							
S. W. $\frac{1}{4}$, 23	132.30	2,867.00	147.39	2,867.00	141.09	2,825.00	149.61
Except R. R.							
S. E. $\frac{1}{4}$, 23	152.68	8,467.00	435.23	8,467.00	416.61	7,933.00	420.08
Except R. R.							
W. $\frac{1}{2}$, S. W.		(24.25-a)		(24.25-a)		(24.25-a)	
$\frac{1}{4}$, 24	27.76	4,500.00	231.30	4,500.00	221.40	4,295.00	226.38
S. frac. S. E.							
$\frac{1}{4}$, 22	70.21	750.00	20.20	750.00	18.54	743.00	24.20
N. of river							
S. of canal,							
21	76.60	887.00	34.93	887.00	32.53	578.00	24.08
S. frac. of							
N. $\frac{1}{2}$, 21	99.00	1,155.00	31.61	1,155.00	28.50	743.00	25.80
S. W. frac.							
$\frac{1}{4}$, 21	131.90	1,537.00	42.05	1,537.00	37.91	990.00	34.37
Frac. S. of							
river, S. E.							
$\frac{1}{4}$, 21	131.50	1,537.00	42.05	1,537.00	37.91	990.00	34.37

2312 With reference to the record as found in Volume 300, pages 520 to 540, inclusive, the defendant objects for the reason it is not one of the classes of instruments concerning which proof of loss can be made in Section 36 of Chapter 30 of the Revised Statutes of Illinois. Also, that no proper foundation has been laid; that nothing contained in the offer, to wit: pages 520 to 540, inclusive, tends to lay any foundation for the Exhibit 1 which has heretofore been introduced in this case, for the reason that in Exhibit 1 Henry L. Young, James H. Young and Mason Young are described as trustees under the last will and testament of Henry Young, deceased, and in the order of appointment of these three gentlemen, as made in the Surrogate Court, Westchester County, New York, they are appointed as the executors of the last will and testament, and that the paper offered does not tend to

support or give authority to the persons named as trustees of the last will and testament of Henry Young. There are some twenty pages of this exhibit.

Objection overruled; defendant excepts.

2313 Said exhibit, pages 520 to 540 of said miscellaneous records, Volume 300, was then read to the jury, as follows:

2314 Will of } Westchester County
Henry Young. } Surrogate Court.

In the Matter of Proving the last Will and Testament and Codicil of Henry Young, deceased.

Be it remembered that heretofore, to-wit, on the 23rd day of October in the year one thousand eight hundred and seventy four Mason Young, one of the executors named in the last Will and Testament of Henry Young late of the Town of Ossining, County of Westchester appeared in open court before the Surrogate of the Westchester and made application to have the said last Will and Testament and Codicil which relates to both real and personal estate proved and on such application the Surrogate having ascertained by satisfactory evidence who were the widow, heirs at law and next of kin of the said testator, and their respective residences, did issue a citation in due form of law, directed to the said widow, heirs at law and next of kin by their respective names, stating their respective places of residence, requiring them to appear before said Surrogate at his office in the Town of Cortlandt in said County of Westchester on the 31st day of October One thousand eight hundred and seventy-four to attend the probate of the said will and codicil.

And afterwards, to-wit, on the said 31st day of October, 1874, satisfactory evidence, by affidavit, having been produced and presented to said Surrogate of the service

of the said citation in the mode prescribed by law, on all the parties named therein, and that none of said heirs at law and next kin were minors, and that the said executor having attended in person and no one appearing to oppose the probate of said will and codicil, such proceedings were thereupon had afterwards that the Surrogate took the proof of said will and codicil hereinafter set forth upon this 31st day of October in the year One thousand eight hundred and seventy-four and he adjudged the said will and codicil to be a valid will and codicil of real estate and personal estate, and the proof thereof to be sufficient; which said last Will and Testament and Codicil and proofs are as follows, that is to say

The Last Will and Testament of Henry Young of Ossining Westchester County State of New York.

I, Henry Young residing in Ossining in the County of Westchester and State of New York do make publish and declare this my last Will and Testament.

First. I direct that my executors pay all my just debts, and the expenses of my funeral out of my estate as soon as conveniently may be after my decease.

2315 *Second.* I give devise and bequeath to my beloved wife Anne M. Young my county seat comprising my dwelling house with the lands farm and premises adjacent thereto, including the plot on the corner of the Post road and the road leading to said country seat in the Town of Ossining in the County of Westchester and State of New York containing between fifty-five and sixty acres more or less. To have and to hold the same to her her heirs and assigns forever and I also give and bequeath to my said wife all my household furniture beds bedding plate pictures printed books and engravings, horses carriages harness cattle farming utensils growing crops provisions and supplies for family use which shall be in or upon said country seat dwelling house and premises at the

time of my decease and in any other dwelling house stable and premises which shall be occupied or used as or for our residence and accommodation at or immediately before the time of my decease. To have and to hold the same to her and her executors, administrators and assigns forever.

Third. I give and bequeath to my said wife an annuity or annual sum of twenty thousand dollars to be paid to her yearly and every year during her natural life in equal quarterly yearly payments from time of my decease.

Fourth. I give and bequeath to my niece Alby F. Harrington, an annuity or yearly sum of five hundred dollars to be paid to her yearly and every year during her natural life in equal quarter yearly payments from the time of my decease.

Fifth. I give and bequeath to my niece Isabella G. Hyde an annuity or yearly sum of five hundred dollars to be paid to her yearly and every year during her natural life in equal quarterly yearly payments from the time of my decease.

Sixth. To provide for the payment of each of the several annuities or yearly sums of money hereinbefore given and bequeathed it is my will and I do hereby devise order and direct that my executors hereinafter named select take and set apart from and out of my estate such real property or such personal property money and securities for money, or both real and personal property, as in their judgment shall be sufficient to produce an annual interest or income sufficient to pay and satisfy such annuity and in case they shall deem it necessary to change the investment of either such trust fund or any part thereof that they invest the same or the proceeds thereof from time to time in their own name as trustees, in bonds secured by mortgages upon productive real estate in the

City of New York or Brooklyn or in public stocks or
 2317 debt of the United States or of the State or City of New
 York keeping such fund separate from the other and with
 and out of the interest and income arising therefrom that
 they pay the said several annuities and yearly sums of
 money and each and every of them from time to time as
 they shall become due and payable until such annuities
 respectively shall cease and if in any year the interest
 or income arising and realized from said securities money
 and property so set apart and held and retained for that
 purpose or from the securities and property in which the
 same shall be invested shall be insufficient I authorize
 them to supply such deficiency out of my residuary estate
 and if the same shall be more than sufficient to pay such
 annuities or yearly sums as shall remain and continue to
 be payable then it is my will and I devise, order and di-
 rect that the expense of said interest and income over
 and above the amount necessary to pay said annuities
 in any year be distributed and paid as hereinafter pro-
 vided for the distribution of surplus income of my re-
 siduary estate and that the said securities, money and
 property selected set apart and held as aforesaid to pro-
 vide for either of said annuities if so set apart and held,
 shall whenever such annuity shall have ceased to be pay-
 able be disposed of distributed and paid in like manner
 as provided hereinafter for distribution and payment of
 2318 the surplus income of my residuary estate and until
 property shall be set apart as herein authorized by my
 executors for each such fund, I direct that each such
 annuity for which no fund is set apart shall be a charge
 upon my whole estate.

Seventh. All the rest residue and remainder of my
 estate real and personal property, rights of property of
 every kind and description whatsoever and wheresoever
 which I shall own or possess or to which I shall be enti-

tled at the time of my death I give devise and bequeath to my sons Henry L. Young, James H. Young and Mason Young hereinafter also appointed the executors of this my will, the survivors and last survivor of them, his or their successors heirs and assigns, to have and to hold the same unto them my said sons Henry L. Young James H. Young and Mason Young the survivors and last survivor of them and his or their successors heirs and assigns as joint tenants and not as tenants in common forever upon trust nevertheless and to and for the uses and purposes following, that is to say, in trust to secure, take and hold the said rest residue and remainder of my estate property and rights of property and the proceeds of any portion thereof which may be sold during the natural lives of my daughters Martha A Leavitt and Josephine Y. Churchill and to longest liver of them with power

2319 to invest the said personal property and every or any part thereof and also the proceeds of real property as the same may be realized from time to time, as may be necessary or expedient in their discretion, having always due regard to the security of the investment in bonds and mortgages upon productive real estate situated in cities of the United States containing by the census of the United States over one hundred thousand inhabitants or in public stocks or debt of the United States or of the State or City of New York or in such other securities or property including stock and bonds of incorporated company as they may deem entirely safe to collect get in and receive the rents, interest, income dividends and profits arising or accruing from or upon such rest residue and remainder of my estate property and rights of property and the proceeds thereof and all bonds, mortgages stocks securities and property in which the same or any part thereof shall be at any time invested and the income arising therefrom after paying all taxes and assessments of

every kind and description which may be levied or assessed upon any property belonging to my estate, or any part thereof, and all necessary and proper costs charges and expenses of or attending the care and management of my estate including such office rent and clerk hire as they may deem necessary and expenses of insuring against fire and of maintaining and keeping in thorough
 2320 repair all buildings belonging to my estate or in which my estate may have an interest and after making the payments which my said executors and trustees are hereinafter empowered to make, in their discretion to divide at the end of each year all of the net income from my estate in equal shares among my children who may be then surviving and the issues of any deceased child or children during their respective lives, such issue to take per stirpes and not per capita, and I further devise and direct that upon the death of the survivor of my said daughters Martha A Leavitt and Josephine Y Churchill, or upon the other determination of this trust the whole of my residuary estate real and personal of every kind and description shall be divided by my said executors in equal shares among my children who may be then surviving and the issue of any deceased child or children such issue to take per stirpes and not per capita and I authorize my executors aforesaid to advance money from time to time to each of my said children and to the issue of any deceased child, such issue to take per stirpes and not per capita during each year such advances not to exceed to each child the sum of two thousand dollars in any one year, in anticipation of the division to be made at the end of the year, such advances not to bear interest.

In the management of my estate I authorize and em-
 2321 power my executors out of any moneys in their hands to apply such sums as they in their discretion may deem advisable in putting in proper condition for the purposes

of sale my real estate or any part or parts thereof, but not for the erection of any buildings thereon except to replace buildings which may be destroyed, and for the care and protection of any property of the estate which in their judgment may be in any way jeopardized or imperilled and as a large amount of my property is in railroad bonds, and other railroad securities I expressly authorize and empower my executors appointed by this my Will to apply any moneys in their hands whenever they shall deem it necessary in order to preserve, protect from sacrifice or make available any railroad bonds, or other railroad securities or property held by me in such manner as they may judge expedient to secure or protect from sacrifice or make available such railroad bonds securities or railroad property and to enter into any agreement in relation thereto for the reorganization of railroad companies whose bonds, securities or stocks they may hold as such executors and to enter into any agreement which they may consider advantageous for the substitution of other bonds stocks or securities for those held by me or by my estate, and if they shall deem it necessary I authorize them to borrow moneys for any purpose 2322 above mentioned and all such payments of money or money advances shall be made if possible out of the income of my estate before any division of income shall take place beyond the sum of two thousand dollars hereinbefore authorized to be advanced annually to each of my children, and if such advances cannot be made out of the income then they shall apply so much of the principal of my estate thereto as may be necessary.

I have heretofore given to and distributed among my children from time to time portions of my property valued by me at the time of such distribution, and amounting upon such valuation at the date of this my will as follows: To my son Henry L. Young, \$201533.93; To

my daughter Mary C. Barnes, \$200495.17, To my son James H. Young \$201600.00, To my daughter Martha A. Leavitt \$200882.77, to my son Mason Young, \$206576.30, To my daughter Alice Eaton \$201119.31, To my daughter Josephine Churchill \$200411.14, making an aggregate of \$one million four hundred and twelve thousand five hundred and fifty-eight dollars and sixty-two cents, and I direct that my executors and trustees herein named in making the division of the principal of my residuary estate as herein directed shall make such division so that the amounts received by each child or the representatives of each child per stirpes added to the sums previously distributed by me as hereinbefore stated to each child shall be equal. The accounts of moneys distributed to my children are kept in a ledger in my own handwriting marked ledger D and any amount hereinafter advanced or paid by me to either of my children and debited in such ledger to each child shall be considered an advanced payment or distribution upon account of amounts to be received by such child from my estate under this my will but no interest shall be charged upon any such advance.

In the event that my daughters Martha A. Leavitt and Josephine Y Churchill, or either of them, shall live for ten years from the date of my death I direct that the division of my residuary estate among my children hereinbefore provided shall be made at the expiration of such ten years from my death notwithstanding my said daughters or either of them shall then be surviving such division to be then made among my children who may be then surviving and the issue of any deceased child or children in equal shares such issue to take per stirpes and not per capita.

I give to my executors and trustees full power and authority to sell either at public or private sale at such time or times, for such prices and upon such terms as to credit

as they may deem advisable all or any portion of my real estate and I give them power to mortgage my real
 2324 estate or any portion thereof as security for any moneys which they may borrow for the purposes hereinbefore named for which authority to borrow money is given and to enter into agreements for the actual partition of any lands or interest in lands or under rights which I may hold in common with any other person or persons and to carry such partition or partitions into effect, to lease any or all of my real estate at such rents and for such terms of years as they may deem advisable and I give them full power to make execute acknowledge and deliver all such deeds, mortgages leases and other instruments as may be requisite or necessary to enable them to execute the powers or any of them hereby conferred upon them, and I further authorize them to compromise settle and adjust upon terms which may seem to them equitable any debts due to my estate and full releases and acquittances to give therefor.

In case it shall at any time be deemed advisable by my executors for the purpose of straightening boundaries or obtaining the whole of blocks or parcels of land of which parts may belong to my estate, or of obtaining direct access to navigable waters or to secure water fronts and rights necessary to make any of my property available for manufacturing or commercial purposes to purchase lands and premises lying adjacent to any improved portion of my estate I authorize said executors from time to
 2325 time to make such purchases and to pay therefor out of the property hereby given to them in trust and to exercise as to lands so purchased all the powers given to them herein with reference to my estate.

All powers granted in this will to the executors and trustees herein named shall be deemed and taken to be exercised by and in the discretion of the survivors and

last survivor of such executors and trustees in like manner as if in each case the said powers had been given and the said discretion had been directed to be exercised by the survivors and last survivor of them.

I nominate and appoint my sons Henry L. Young, James H. Young and Mason Young executors of this my last will and testament and I direct that neither of said executors shall be required to give bonds or other security in any state as executor or trustee under this my will nor shall either be liable for the acts of the other.

I hereby revoke all former and other wills by me made.

In witness whereof I have hereunto set my hand and seal this 10th day of August in the year One thousand eight hundred and seventy-four.

HENRY YOUNG [L. S.]

Signed sealed published and declared by the said Henry Young to be his last will and testament in the presence of us and of each of us who in the presence of each other and of the testator and at his request have signed our names as witnesses.

EUGNE SMITH No 23 East 44th St New York City

THEODORE R SHEAR No 314 West 28th St New York City

JOHN E CURRAN No 19 East 46th St New York City

I Henry Young do make publish and declare this Codicil to my last Will and Testament.

I give to the Presbyterian Church of Sing Sing of which the Reverend Wilson Phraner is pastor the note of said church for five thousand dollars held by me, and the sum of five thousand dollars which last named amount I authorize and direct the executors and trustees named in my will to pay to the proper officer of said church at such times during the continuance of the trust created by said will and in such amounts as they may deem most convenient.

HENRY YOUNG [L. S.]

Signed published and declared by the said Henry Young as and for Codicil to his last will and testament this 17th day of October, A. D. 1874 in the presence of us who in his presence and in the presence of each other and at his request have hereunto subscribed our names as witnesses.

HENRY S LEAVITT New York City
R. C. CHURCHILL New York City

Westchester County, Surrogate Court.

To OWEN T. COOFIN,

Surrogate of the County of Westchester.

The petition of Mason Young of the City of New York in said county, respectfully sheweth, that Henry Young, late of the Town of Ossining in said Westchester County, departed this life in said Westchester County on the 21st day of October in the year one thousand eight hundred and seventy-four having previously, as your petition is informed and believes, duly made and executed his last will and testament and codicil; that your petitioner is one of the executors named in the said will, that the said deceased was a citizen of the United States; that he was at or immediately previous to his death an inhabitant of the County of Westchester; and that his last will and testament and codicil relates to both real and personal estate, the value of which in the opinion of your petition will not exceed the sum of two million dollars.

Your petition further shows that the said Henry Young left him surviving Anne Mason Young, his widow, who resides at the said Town of Ossining, and James H. Young, Mary L., wife of Henry W. Barnes, Martha A., wife of Henry S. Leavitt, Josephine Y., wife of Richard C. Churchill, and your petitioner severally residing at the City of New York, Henry L. Young residing in the City of Pokenessie, Dutchess County, N. Y., and Alice, wife of

D. Cady Eaton, who resides at the City of New Haven, Conn., his only children, heirs at law and next of kin, all of whom are of full age.

Your petitioner further shows, that he is informed and believes that the Surrogate of the County of Westchester has jurisdiction to take the proof of the said last will and testament, and over the executors thereof and the power of granting letters testamentary thereof, with all powers incidental thereto, and that he desires that such proof should be taken and such letters granted, and that such further or other proceedings in the premises should be had as may be legal and proper.

Your petitioner therefore prays that a citation may issue out of and under the seal of this court to be directed to the proper persons pursuant to the statute in such case made and provided, requiring them and each of them at such time and place as shall be in said citation mentioned to appear and attend the probate of said will and last testament and codicil and that such further or other proceedings in the premises should be duly had as may be requisite to the proving and recording of the said last will and testament and the granting probate and letters testamentary thereof. And your petitioner will ever pray, etc.

Dated this twenty-third day of October, 1874.

MASON YOUNG.

STATE OF NEW YORK, }
COUNTY OF WESTCHESTER. } ss.

I, Mason Young, the petitioner named in the foregoing petition, being duly sworn say that I have heard the foregoing petition to which I have subscribed my name read and know the contents thereof, and the same are true of my own knowledge, except as to such matters as are stated therein upon my information and belief, and as to those matters I believe it to be true.

MASON YOUNG.

Sworn and subscribed to before me this twenty-third day of October, 1874.

OWEN T. COFFIN,
Surrogate.

At a surrogate's court, held in and for the County of Westchester at the surrogate's office in the town of White Plains, on the twenty-third day of October in the year one thousand eight hundred and seventy-four,—

Present: Owen T. Coffin, Surrogate.

In the matter of proving the last will and testament and codicil thereto of Henry Young deceased.

On reading and filing the petition of Mason Young, executor, &c, propounding the last will and testament and codicil of Henry Young, late of the Town of Ossining in the County of Westchester, deceased, for probate.

It is ordered that a citation issue to the proper persons, pursuant to the prayer of the said petition, requiring them to appear in this court on the thirty-first day of October, 1874, at 9 o'clock in the forenoon of that day, at the surrogate's office in the Town of Cortlandt, to attend the probate of the said will and codicil.

OWEN T. COFFIN,
Surrogate.

The People of the State of New York

By the grace of God, free and independent

To

Anne Mason Young, residing at the Town of Ossining,
Westchester County, N. Y.

James H. Young, Mary C. Barnes, Martha A. Leavitt
and Josephine Y. Churchill, severally residing at the City
of New York.

Henry L. Young, residing at the City of Pokenepsie,
Dutchess County, N. Y.

Alice Eaton, residing at New Haven, Connecticut.

Send Greeting.

Whereas, Mason Young of the City of New York has
lately applied to our surrogate of the County of West-
chester, to have a certain instrument in writing, bearing
date the 10th day of August, 1874, and the 17th day of
October, 1874, respectively purporting to dispose of both
real and personal estate, duly proved as the last will and
testament and codicil of Henry Young, late of the Town
of Ossining in said county, deceased, in pursuance of the
statute in such case made and provided; you and each of
you are cited and required personally to be and appear
before our said surrogate at his office in the Town of
Cortlandt in the said county on the thirty-first day of Oc-
tober, 1874, at nine o'clock in the forenoon of that day,
then and there to attend to the probate of said last will
and testament and codicil.

Witness Owen T. Coffin, surrogate of said county at the
Town of White Plains, the 23rd day of October in the year
of our Lord one thousand eight hundred and seventy-four.

W. M. SHINNER,

Clerk to the Surrogate's Court.

(L.S.)

We admit due personal service upon us this day of the
within citation and we consent that the probate of the

will and codicil therein mentioned be proceeded with at the time and place in said citation named.

Dated Ossining, October 23, 1874.

ANNE M. YOUNG,
HENRY L. YOUNG,
MARY C. BARNES,
MARTHA A. LEAVITT,
ALICE YOUNG EATON,
JOSEPHINE Y. CHURCHILL,
JAMES H. YOUNG.

Signed in presence of
JOHN GIBNEY.

STATE OF NEW YORK, {
COUNTY OF WESTCHESTER, } ss.

On the 23rd day of October in the year one thousand eight hundred and seventy-four before me personally appeared Anne M. Young, Henry L. Young, Mary C. Barnes, Martha A. Leavitt, Alice Young Eaton and Josephine Y. Churchill and on the 26th day in the month and year aforesaid before me also personally appeared James H. Young, all of whom are known to me to be the individuals described in the within citation, and in the foregoing instrument and who executed said instrument and they then severally acknowledged, that they executed said instrument.

JOHN GIBNEY,
Notary Public Westchester County.

Westchester County. Surrogate's Court.

In the matter of proving the last will and testament of Henry Young, deceased.

STATE OF NEW YORK, }
COUNTY OF WESTCHESTER, } ss.

Theodore R. Shear of the City of New York, being duly sworn and examined before the surrogate of said County of Westchester, doth depose and say that he was well acquainted with Henry Young, late of the Town of Ossining in said County of Westchester, deceased, that he was present as a witness and did see the said Henry Young, deceased, subscribe his name at the end of the instrument in writing now produced, as shown to this deponent, bearing date the 10th day of August in the year of our Lord one thousand eight hundred and seventy-four, purporting to be the last will and testament of the said Henry Young, deceased. That the said Henry Young at the time of making the said subscription declared the said instrument to be his last will and testament, and requested this deponent to sign his name as a witness thereto. Thereupon this deponent did accordingly sign his name as a witness at the end of the said instrument in the presence of the said Henry Young, deceased, and in the presence of Eugene Smith and John E. Curran, severally of the City of New York, the other subscribing witnesses to the said instrument. This deponent further sayeth that the said Henry Young, deceased, at the time he so executed the said instrument was a citizen of the United States, of full age, sound mind and memory in all respects competent to devise real estate and not under restraint; and that this deponent saw the said Eugene Smith and John E. Curran sign the said instrument at the end thereof as witnesses thereto in the presence of said Henry Young, deceased, and at his request.

THEODORE R. SHEAR.

Sworn, examined and subscribed before me, this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

Westchester County.

Surrogate's Court.

In the matter of proving the last will and testament of Henry Young, deceased.

STATE OF NEW YORK, }
COUNTY OF WESTCHESTER, } ss.

John E. Curran of the City of New York, being duly sworn and examined before the surrogate of said County of Westchester, doth depose and say that he was well acquainted with Henry Young, late of the Town of Ossining, in said County of Westchester, deceased. That he was present as a witness and did see the said Henry Young, deceased, subscribe his name at the end of the instrument in writing now produced and shown to this deponent, bearing date the 10th day of August in the year of our Lord one thousand eight hundred and seventy-four, purporting to be the last will and testament of the said Henry Young, deceased. That the said Henry Young, at the time of making the said subscription, declared the said instrument to be his last will and testament and requested this deponent to sign his name as a witness thereto.

Thereupon this deponent did accordingly sign his name as a witness at the end of the said instrument in the presence of the said Henry Young, deceased, and in the presence of Eugene Smith and Theodore R. Shear of the City of New York, the other subscribing witnesses to the said instrument. This deponent further sayeth that the said Henry Young, deceased, at the time he so executed the said instrument was a citizen of the United States, of full

age, sound mind and memory in all respects competent to devise real estate and not under restraint and that this deponent saw the said Eugene Smith and Theodore R. Shear sign the said instrument at the end thereof as witnesses thereto in the presence of said Henry Young, deceased, and at his request.

JOHN E. CURRAN.

Sworn, examined and subscribed before me this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

Westchester County.

Surrogate's Court.

In the matter of proving of the last will and testament of Henry Young, deceased.

STATE OF NEW YORK, {
COUNTY OF WESTCHESTER, { ss.

Eugene Smith of the City of New York being duly sworn and examined before the surrogate of said County of Westchester, doth depose and say that he is well acquainted with Henry Young, late of the Town of Ossining in said County of Westchester, deceased. That he was present as a witness and did see the said Henry Young, deceased, subscribe his name at the end of the instrument in writing now produced and shown to this deponent bearing date the 10th day of August in the year of our Lord one thousand eight hundred and seventy-four, purporting to be the last will and testament of the said Henry Young, deceased. That the said Henry Young at the time of making the said subscription declared the said instrument to be his last will and testament and requested this deponent to sign his name as a witness thereto. Thereupon this deponent did accordingly sign his name as a

witness at the end of the said instrument in the presence of the said Henry Young, deceased, and in the presence of Theodore R. Shear and John E. Curran severally of the City of New York, the other subscribing witnesses to the said instrument. This deponent further sayeth that the said Henry Young, deceased, at the time he so executed the said instrument was a citizen of the United States, of full age, sound mind and memory in all respect competent to devise real estate and not under restraint and that this deponent saw the said Theodore R. Shear and John E. Curran sign the said instrument at the end thereof as witnesses thereto in the presence of said Henry Young, deceased, and at his request.

EUGENE SMITH.

Sworn, examined and subscribed before me this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

Westchester County, Surrogate's Court.

In the matter of proving the codicil to the last will and testament of Henry Young, deceased.

STATE OF NEW YORK, }
COUNTY OF WESTCHESTER, } ss.

Richard C. Churchill, of the City of New York, being duly sworn and examined before the surrogate of said Westchester County, doth depose and say that he was well acquainted with Henry Young, late of the Town of Ossining in said Westchester County, deceased. That he was present as a witness and did see the said Henry Young, deceased, subscribe his name at the end of the instrument in writing now produced and shown to this deponent bearing date the 17th day of October in the year of our Lord one thousand eight hundred and seventy-four,

purporting to be a codicil to the last will and testament of the said Henry Young, deceased. That the said Henry Young at the time of making the said subscription, declared the said instrument to be a codicil to his last will and testament and requested this deponent to sign his name as a witness thereto. Thereupon this deponent did accordingly sign his name as a witness at the end of the said instrument in the presence of the said Henry Young, deceased, and in the presence of Henry L. Leavitt of the City of New York, the other subscribing witness to the said instrument. This deponent further sayeth that the said Henry Young, deceased, at the time he so executed the said instrument was a citizen of the United States, of full age, sound mind and memory, in all respects competent to devise real estate and not under restraint and that this deponent saw the said Henry L. Leavitt sign the said instrument at the end thereof as a witness thereto in the presence of said Henry Young, deceased, and at his request.

RICHARD C. CHURCHILL.

Sworn, examined and subscribed before me this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

Westchester County, Surrogate's Court.

In the matter of proving the codicil to the last will and testament of Henry Young, deceased.

STATE OF NEW YORK, }
COUNTY OF WESTCHESTER, } ss.

Henry S. Leavitt of the City of New York, being duly sworn and examined before the surrogate of said County of Westchester, doth depose and say that he was well acquainted with Henry Young, late of the Town of Ossining, in said County of Westchester, deceased. That

he was present as a witness and did see the said Henry Young, deceased, subscribe his name at the end of the instrument in writing now produced and shown to this deponent, bearing date the 17th day of October in the year of our Lord one thousand eight hundred and seventy-four, purporting to be a codicil to the last will and testament of the said Henry Young, deceased. That the said Henry Young at the time of making the said subscription declared the said instrument to be a codicil to his last will and testament and requested this deponent to sign his name as a witness thereto. Thereupon this deponent did accordingly sign his name as a witness at the end of the said instrument in the presence of the said Henry Young, deceased, and in the presence of Richard C. Churchill of the City of New York, the other subscribing witness to the said instrument. This deponent further sayeth that the said Henry Young, deceased, at the time he so executed the said instrument was a citizen of the United States, of full age, sound mind and memory, in all respects competent to devise real estate and not under restraint and that this deponent saw the said Richard Churchill sign the said instrument at the end thereof as a witness thereto in the presence of said Henry Young, deceased, and at his request.

Sworn, examined and subscribed before me this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

At a surrogate's court held in and for the County of Westchester at the surrogate's office in the Town of Courtland on the 31st day of October, A. D. 1874.

Present

OWEN T. COFFIN,
Surrogate.

In the matter of proving the last will and testament and codicil of Henry Young, deceased.

The proofs in this matter being deemed sufficient it is ordered that the said will and codicil be admitted to probate and that the usual decretal order be entered.

OWEN T. COFFIN,
Surrogate.

At a surrogate's court held in and for the County of Westchester at the surrogate's office in the Town of Courtland on the 31st day of October, 1874.

Present

OWEN T. COFFIN,
Surrogate.

In the matter of proving the last will and testament and codicil of Henry Young, deceased.

Satisfactory proof having been made of the due service of the citation heretofore issued in this matter requiring the proper persons to appear in this court on the 31st day of October, 1874, and attend the probate of the last will and testament and codicil of Henry Young, late of the Town of Ossining, deceased, and Mason Young, an executor named in the said last will and testament, having appeared in person in support of the proof of the same, and no other parties or persons having appeared in the said matter and after hearing the proofs and allegations of the said executor and due deliberation being thereon had, on motion of said executor it is adjudged and decreed, and the surrogate of the County of Westchester, by virtue of the power and authority in him vested doth adjudge and decree that the said last will and testament and codicil was duly executed, that the same is genuine and valid, and that the said Henry Young at the time of

executing the same was in all respects competent to devise real estate and not under restraint.

And this court doth further order and decree that the said last will and testament and codicil, and the proofs and examinations taken in respect to the same be recorded and that the said last will and testament and codicil be admitted to probate and that the same be and hereby is established as a will and codicil of real and personal estate.

OWEN T. COFFIN,
Surrogate.

Westchester County, Surrogate's Court.

In the matter of proving the last will and testament and codicil of Henry Young, deceased.

WESTCHESTER COUNTY: SS.

I, Henry L. Young, an executor named in the last will and testament of Henry Young, late of the Town of Ossining in the said county, deceased, being duly sworn, do depose and declare that I reside in the City of *Pokeepie*, in the County of Dutchess, and that I will well, faithfully and honestly discharge the duties of executor of the said last will and testament according to law.

HENRY L. YOUNG.

Sworn and subscribed before me this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

Westchester County.

Surrogate's Court.

In the matter of proving the last will and testament and codicil of Henry Young, deceased.

WESTCHESTER COUNTY: ss.

I, James H. Young, an executor named in the last will and testament of Henry Young, late of the Town of Ossining in the said county, deceased, being duly sworn, do depose and declare that I reside in the City of New York, in the County of New York, and that I will well, faithfully and honestly discharge the duties of executor of the said last will and testament according to law .

MASON YOUNG.

Sworn and subscribed before me this 31st day of October, A. D. 1874.

OWEN T. COFFIN,
Surrogate.

At a surrogate's court held in and for the County of Westchester, at the surrogate's office, in the Town of Courtlandt, on the thirty-first day of October, A. D. 1874.

Present

OWEN T. COFFIN,
Surrogate.

In the matter of proving the last will and testament and codicil of Henry Young, deceased.

At the time and place aforesaid Henry L. Young, James H. Young and Mason Young, the executors named in the last will and testament of Henry Young, late of the Town of Ossining in said county, deceased, appeared in open court and took the oath required by law to qualify them as such executors, whereupon it was ordered that letters testamentary of the estate of the said deceased be and they are hereby granted to Henry L. Young, James H. Young and Mason Young, executors as aforesaid.

OWEN T. COFFIN,
Surrogate.

The people of the State of New York:

By the grace of God, free and independent.

To all to whom these presents shall come or may
concern send greeting:

Know ye, That at the County of Westchester on the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-four, before Owen T. Coffin, surrogate of our said county, the last will and testament and codicil thereto of Henry Young, late of the Town of Ossining, said county, deceased, was proved and is now approved and allowed by us, and the said Henry Young, having been at or immediately previous to his death an inhabitant of the County of Westchester, by reason whereof the proving and registering of said will and codicil and the granting administration of all and singular the goods, chattels and credits of the said testator, and also the auditing allowing and final discharging the account thereof, doth belong unto us, the administration of all and singular the goods, chattels and credits of the said deceased, and any way concerning his will and codicil is granted unto Mason Young, James H. Young and Henry L. Young, the executors in the said will named, they being first duly sworn faithfully and honestly to discharge the duties of such executors according to law.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto annexed.

Witness Owen T. Coffin, surrogate of our said county, the 2nd day of November, in the year of our Lord one thousand eight hundred and seventy-four.

(L.S.)

OWEN T. COFFIN,
Surrogate.

WESTCHESTER COUNTY, }
 SURROGATE'S OFFICE, } ss.

Recorded the within letters testamentary in Liber K. of Letters testamentary, page 498, the 2nd day of November, 1874.

W. M. SKINNER,
Clerk Surrogate Court.

STATE OF NEW YORK, }
 COUNTY OF WESTCHESTER, } ss.
 SURROGATE'S OFFICE,

I, William M. Skinner, clerk to the Surrogate's Court of said county, do hereby certify that I have compared the foregoing copy of preamble will and testament and codicil thereto petition order for citation and the citation issued on such order the proof of service thereof depositions of witnesses to will and codicil order of probate oaths of executors order for letters testamentary and the letters testamentary issued thereunder with the original record thereof now remaining in this office and have found the same to be a correct transcript therefrom, and of the whole of such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of office of the surrogate of said county this 12th day of May in the year of our Lord one thousand eight hundred and seventy-seven.

WM. M. SKINNER.

[SEAL.]

Clerk to the Surrogate's Court.

STATE OF NEW YORK, }
 COUNTY OF WESTCHESTER, } ss.

I, Owen T. Coffin, surrogate of said county and presiding magistrate of the surrogate's court, do hereby certify that the foregoing authentication and attestation of the preamble, will and testament and codicil thereto petition

order for citation and the citation issued on such order, the proof of service thereof, depositions of witnesses to will and codicil, order of probate, oaths of executors, order for letters testamentary and the letters testamentary issued on such order is on due form. That the said copies of said will and codicil are certified, exemplified and attested to be true copies in the manner in which copies of such instruments are usually exemplified and attested in the State of New York, and that the said copies would be received in evidence in the courts of the said State of New York and that William M. Skinner is the clerk of the surrogate's court of Westchester County and his signature to the certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed my official seal this twelfth day of May, A. D. 1877.

OWEN T. COFFIN,
Surrogate.

[SEAL.]

Filed June 23, 1893, at 1½ o'clock P. M.

2346-2347 Extract from last will and testament.

2349 Deposition of WILLIAM A. VAIL offered by the plaintiff:

Direct Examination read by Mr. Butters.

My name is William A. Vail. I live at Lockport, Will County, Illinois. I am in the employ of the Sanitary District of Chicago. I am termed on the pay roll as an operator. My duties are performed at the controlling works at Lockport. There are other employes at the controlling works besides myself. I have been operator at
2350 the controlling works since October 1, 1903. I was for
2351 a year and a half a policeman for the Sanitary District. My duties are from seven in the morning till three in the afternoon, every day in the week. I read the gauge every

2352 half hour. I have seen the water above the crest of the
 2358 dam at the controlling works at Lockport but never to
 2360 exceed 3.2 feet. I have seen the gates down seven feet
 for a very short time, which meant a gauge reading of
 2361 seven feet. I have lowered it that way for visitors and
 then brought it right up again.

2362 Deposition of ISHAM RANDOLPH offered by the plaintiff:

Direct Examination read by Mr. Butters.

My name is Isham Randolph. I am fifty-seven years of
 age. I live in Riverside, Cook County, Illinois. My pro-
 fession is civil engineer. In that profession since 1868.
 I am chief engineer for the Sanitary District of Chicago;
 have been for twelve years. I think the district was or-
 ganized in 1899, in November or December of that year.

I am acquainted with the scope embodied in that district.

2363 Lake Michigan is the eastern boundary of the Sanitary
 District. Eighty-seventh street is the south boundary.

2364 The west boundary is a very irregular one. The north
 limit of the City of Chicago is the northern boundary of
 the original district.

2366 I have lived in the city and its immediate suburbs for
 twenty-five years. The Chicago River has four branches.

2369 Each, in a state of nature, emptied into Lake Michigan.

My acquaintance with them extends over thirty-three
 2370 years. The levels of the original Sanitary District were
 run from the bench mark known as the Chicago City
 datum. My own knowledge of its use extends back to

2371 1880. Chicago City datum has been used since 1836. Chi-
 cago City datum is a plane of reference assumed by the
 builders of the Illinois and Michigan Canal. It so hap-

2374 pened that it coincided with the low water of 1847. I
 have never taken the elevations of the surface of the water

at Lake Joliet with reference to Chicago City datum. I have seen the report of elevations several times. It has been ascertained under my direction. Speaking from recollection, the elevation is about seventy-two feet below
 2375 Chicago datum. As chief engineer, I had general supervision of the engineering department for the Sanitary District. There were four or five chief engineers prior to my coming into office. I have had charge of it practically for twelve years. The channel was connected with the west fork of the south branch of the Chicago River at Robey street in the City of Chicago. It extended in a southwesterly direction to Lockport, where its contents were discharged into the Desplaines River. The artificial channel was 28.05 miles long. It extended from Robey street in the City of Chicago to Lockport, in the County of Will. Roundly speaking, the junction at Robey street is six miles back from the lake. 14.95 miles was
 2377 partially or entirely through rock section. 14.10 miles was through other substance. The channel in the rock is 162 feet wide on top. It is a fraction under thirty-six feet deep throughout the rock cuts. It is 160 feet at the bottom
 2378 through the rock. The channel does not cut through the lowest part in the divide between the water sheds. The general assumption is, however, that the divide is at the township line near Summit, in section G. At that point the excavation was thirty-eight feet. The summit through which the cut was made is about thirteen feet above Chicago datum. It would be about thirteen feet above the lake waters. The crest or summit that I have described is beyond the boundaries of the original district. There are many locations higher than the crest, within the drainage district. They are ten or twelve or more feet higher.
 2379 The width at the surface in the earth portions of the canal are four times the depth plus the bottom width. I can give it to you at a place thirteen feet above datum.

At that point it is 262 feet across from slope stake to slope stake. At the bottom it is 110 feet wide. From the summit to Willow Springs the bottom of the channel is 202
 2380 feet wide. Assume a case where it is forty feet deep, that would be 362 feet wide at the slope stakes. I forget whether the deepest place is on section C or on section 14. My recollection is it was about fifty-six feet. The slopes in the earth are one foot vertical, two feet horizontal. In the rock the cutting is vertical with two off sets on each side of six inches each.

Q. You may state what the carrying capacity of this canal in the rock portion to convey water is, in cubic feet per minute, past a given point?

Objected to by the defendant; objection overruled; defendant excepts.

2381 It is designed for a flow of 600,000 cubic feet per minute, or 10,000 per second.

Q. At what current? A. A mile and nine-tenths per hour.

Q. You may tell the court whether or not the rock portions of the drainage canal will bear more or a greater current than that. If so, how much?

Objected to by the defendant; objection overruled; defendant excepts.

2382 There is no physical reason which would prohibit a very much higher velocity in the rock channel, because it is not subject to erosion. If it is possible to put it through there it would not make any difference if you put it twenty-five feet—let me see, twenty-five feet a second.

2384 Such a velocity as that would involve a very precipitious slope. The slope at which the channel was built, you could not get any such velocity in it and you would have to go to work and figure a new slope in that channel. The new slope, you could use the cross section, of course, before starting—say you start here at twenty-two feet,

and you want to get such a velocity, have a slope which is constantly approaching the bottom of the channel, and you are reducing its cross-section capacity. So it takes an elaborate computation to arrive at what you want. The slope of the rock section is one foot fall in 20,000 feet of
 2385 length. It falls away from the Chicago River southwest. I will simply state that a volume of water which can be gotten through here depends upon the height at which Lake Michigan stands. Our computations are based upon a mean depth of twenty-two feet, and at that depth, we have figured out that the channel will carry 600,000 cubic feet of water per minute. If the lake falls the capacity is diminished. If the lake rises the capacity is increased.
 2386 The lake has a fluctuation, a variation of four and four and one-half feet above and below its mean stage.

Q. When the lake is piled up by natural methods to an altitude of two and one-half feet, how much water will go through the rock portions of this canal? A. It never does pile up to that, though.

Q. Suppose it does, then how much water will go through that?

Objected to by the defendant as assuming a hypothesis or condition of affairs not proved by the evidence in this case.

Objection overruled; defendant excepts.

2387 A. I don't know.

I don't know what was the highest water in the lake on the shore within this district. I don't know whether it was in the year 1886. I cannot fix the date. I think I have known it to be three feet above datum. Three feet is, I think, the highest I have personally known of it. That
 2388 would make about twenty-five feet. At twenty-five feet, unless there was a corresponding adjustment of the gates at the other end, it would increase the volume of water which would flow through. I don't know how much it

would increase it. I have not figured it up at all. If it
 2389 is the thing which I must do, I will; otherwise I will not.
 2390 There are no means provided at Robey street where the
 channel connects with the Chicago River to govern the
 flow into the channel at that point. There has been a
 turning basin dug out there, a windage basin. I don't
 recollect the size of the windage basin at that point, but
 I think it is 400 feet across. It is very nearly square.
 2391 Oh, it goes down in depth to minus 24.48, I think. The
 cross-section of the drainage district, where it connects
 with the windage basin, at that point, is 110 feet at the
 bottom width side slopes of one vertical to two horizontal.
 208 feet across. A series of lifting gates and a movable
 dam are provided for controlling the flow of water out of
 the channel. There are seven gates. They have an open-
 ing each of thirty-two feet. The sill of the gate is fifteen
 feet below Chicago datum. They are of uniform size.
 2392 Masonry was put in in such shape that if at any time it
 was considered desirable to put in additional gates, the
 masonry could be removed and gates put in. I think there
 are eight blanks. The gates will be the same size as those
 already installed. The length of the crest of the dam be-
 2893 tween bulk heads is 160 feet. Friction has something to
 do with the quantity of water that will run over the crest
 of the dam. Increasing the friction reduces the efficiency
 of the channel. The crest is formed by two steel leaves
 coming together at an oblique angle. Friction comes into
 2394 play for the entire width of the crest, whatever that may
 be. I don't remember what it is. The width of the crest
 2395 of the dam is nearly two feet. At the end of the channel
 there is a bulk-head and operating house between the
 gates and the Bear Trap Dam and, also, a small house
 with stairway leading up to the towers above the gates.
 They are simply adjuncts to the controlling works. There
 is one windage basin constructed at the entrance and one

at Lockport. The windage basin at Lockport is at the controlling works. The windage basin is a fan shaped basin gradually widening from 160 to 500 feet. The widest point of the windage basin is at the south end of the Bear Trap Dam. When the Bear Trap Dam is open the waters flow immediately out of this basin. The slope in the bottom of the windage basin is one foot in 20,000. Rock and concrete walls surround the windage basin. I think the original excavation was in rock. If the dam has been closed for some time and then suddenly opened, it would have a capacity equal to the flow of the channel. At least 600,000 cubic feet a minute, but after the dam had been lowered and the slopes adjusted themselves to a steady flow that is reduced very materially and I do not now recall what is the limit under the extreme slope. If you could maintain a depth to get you 600,000 feet flow, it would flow 600,000 cubic feet right along, if you had the depth. The quantity of water passing over the crest of the dam depends upon the height. As the dam is lowered its resistance to the flow increases, because it presents a broad flattening surface, rather than a sharp crest. It increases the friction. If the dam were raised up and closed it would shut off the flow entirely. The difference between the height of the dam when it is lowered as low as it can be, and the height of the crest when it is raised as it can be, is fifteen feet. It will hold the water up to the level of Lake Michigan, whatever that may happen to be, provided it does not rise above plus 5; plus 5, it would flow over the walls. With the lake at datum and the gates closed, the depth of the water in the windage basin would be about thirty feet. If the dam is closed and one of the gates that I have mentioned is raised to flow its full capacity, I don't know how much water will pass that gate per minute, in cubic feet. I never figured it out. The work was done under my supervision as

chief engineer. About five per cent. of the work was constructed at the time I commenced as chief engineer. Work was done in a small way at various points between Willow
2404 Springs and Lockport. No work was done on the controlling works and windage basin at Lockport. The controlling works at Lockport were completed some time prior to the completion of the channel. I don't recall now the dates. The channel was practically completed in December, 1899. The portion between Summit and Willow Springs is about 5.3 miles long. It is excavated through glacial drift. The cross-section of the channel is 202 feet wide on the bottom; the side slopes are two feet horizontal to one foot vertical. The slope at the bottom at that point is one foot to forty thousand. It is designed for a flow of 600,000 cubic feet of water per minute, of a velocity of a mile and a quarter an hour. All of the matters I have
2405 mentioned and described there comprise what is known as the controlling works. I was present at the controlling works on the 17th day of January, 1900. The president of the board and his associate, trustees, engineers, and the clerk of the district were present at the controlling
2406 works on the 17th day of January, 1900. I recall the presence of Mr. Johnson and Mr. Cooley, engineers at that time. Prior to that time nothing but the leakage had been allowed to run through this channel and along through the controlling works. Colonel Taylor, as representing the governor of the state, formally authorized the opening of
2407 this canal in the name of the State of Illinois. I am unable to answer who opened the canal. There was such a scramble for the honor that I don't know who really
2408 deserved it. The president of the board said, "Let her go," and then the valves were opened and the dam was lowered. When the dam was lowered the waters of the channel began to seek their level, going west as hard as they could towards St. Louis. They flowed to the Des-

2409 plaines. Well, following the natural law, they flowed into the Illinois River and from the Illinois River into the Mississippi River. If they do not evaporate before they get there they get into the Gulf of Mexico.

Mr. CURRAN: Q. Where did these waters come from?

2410 A. I think they were condensed vapors.

I think they started near the eastern boundary of the State of Illinois, in Lake Michigan, and out of Lake Michigan into the Chicago River, and from the Chicago River into the Sanitary and Ship Canal. On the 2nd day of 2411 January, 1900, the channel was empty and was being filled from Lake Michigan. The defendant corporation did it. The first actual flow upstream in the south branch of the Chicago River and down stream in the channel that that I have described, into the Desplaines River, was on the 17th of January, 1900. I know the Town of Lyons. I have been there very often. I did construct some work along or adjacent to the Desplaines River at the township 2412 of Lyons. It consisted of levees and concrete embankments. The levees were a mile or two long. They extended beyond the township of Lyons several miles. The total length of these levees was nineteen miles. I don't know the width of the bottom. They vary. I don't know about the height, either. They varied in height. I suppose an average height of eight feet or so. They were constructed of the soil adjacent to the point, adjacent 2413 to the places at which they were built. My recollection is they were about twenty feet wide on top and on the side slopes one and a half to one. The length of the stone and concrete work between the bulk-heads was 398 feet. The height of the concrete work was about seven feet. The width was four feet wide, on top, and I don't remember the width at the bottom. There was a slight depression below the general surface of the valley at the point where the stone work was constructed. The levees

that I have described at that point connected with the stone and concrete work at each end. The stone work
2414 and levees ran in a southwesterly direction. A very large part of it was at the southerly end of the stone work; only a small amount was at the north end. It is about six miles from Robey street to the lake at the
2415 south branch of the Chicago River. The Sanitary District has built a number of bascule bridges. It has widened and deepened the river; built a very large amount of docking. I think it began in the fall of 1899, or spring of 1899, to widen the river; I don't recollect which. The
2416 river was widened a uniform width of 200 feet. Excavation is confined to the south branch of the Chicago River. We did not go into the main river at all. About
2418 85 per cent. of that distance had to be worked upon. We deepened about eight feet. That was true for about five miles. The work has not ceased yet. We are still engaged in it. I have never computed what was the flowage capacity from Lake Michigan to the canal at Robey street, before that work was commenced. I have a knowledge of statements made by others which I think are reasonably
2419 correct. I mean engineers under my supervision and direction. I think the report was made to me by Mr. T. T. Johnson, although the work was not done by him. I don't recall now who the work was done by. We had several parties engaged in work of that kind. The flow to the westward, so far as I am advised, did not exceed at any time 60,000 cubic feet of water per minute, which was what was pumped into the Illinois and Michigan Canal. That was prior to the opening of the Sanitary District. Since
2420 the opening of the Sanitary District channel and since the widening and deepening of the Chicago River, the flow has varied at times. The Secretary of War assumed control of the flow in the Chicago River and dictates what shall be allowed to flow, so as not to interfere with naviga-

2421 tion. The widening is not completed, you remember. At
 the present time it could safely flow 300,000 cubic feet.
 It is being improved with a view to flowing 480,000 cubic
 2422 feet of water through it per minute. The water will flow
 into the Sanitary and Ship Canal. All of the bridges be-
 tween Lake Michigan and Robey street, with three ex-
 ceptions, had center piers. It tended to decrease the flow
 2423 of the water. The bridges since constructed by the de-
 fendant corporation are bascule bridges and have no cen-
 ter piers. It facilitates flow, increases capacity. The
 2424 flow in the stretch indicated is one and one-quarter miles
 2425 per hour. The slope in the Chicago River, since it was
 deepened, is to the westward and something in the neigh-
 borhood of two feet in the six miles. Before that time, it
 is very hard to tell which way the slope was. I have seen
 the water going down stream and then I have seen it
 going up stream. A by-pass has been constructed be-
 tween Adams street and Van Buren street on the west
 2426 side of the river. I think it was commenced in the spring
 of 1899 and finished in 1900, with a capacity of about
 90,000 cubic feet per minute. It empties into the Des-
 2427 plaines River through the Sanitary District Canal. It
 2428 is a part of the flow of the Chicago River, which I have
 been describing. It adds nothing to the volume which I
 have heretofore mentioned. The channel through Joliet
 was enlarged in the Desplaines River to a width of 200
 feet, and deepened, and the concrete walls built. The
 upper basin was dredged to a depth, I think it is minus
 2429 51. A new channel was cut from the controlling works
 through to the wire mills road, about a mile, diverting the
 old Desplaines River channel. Dam number 2, at Joliet,
 Adams Dam, were removed. The stone arch bridge was
 removed and replaced by steel structure on Jefferson
 street. There is a pier in the center of the stream of con-
 crete. The concrete retaining walls are four feet wide on

top and at every part of their height. I am acquainted with the locality of Sixteenth street at Lockport. The
 2430 tail-race from the dam to Sixteenth street was excavated 600 feet wide. I don't know how deep. I think it gives a flow of about four feet of water. The tail-race leads from the discharge to the Bear Trap Dam. It is
 2431 designed for a capacity of one million five hundred thousand cubic feet of water per minute. The defendant corporation did not construct a continuous artificial channel from the Summit or Lyons spill-way to a point opposite the Bear Trap Dam. We corrected the course of the Desplaines River and wherever the old channel could be made available, it was so made, but we made thirteen miles of new channel in that district. A part of it was through glacial drift and part of it was through rock. It was 200 feet wide. The depth varied considerably. Prob-
 2432 ably the average depth was four feet. I do not think the average depth will exceed three feet. Let me think. There was 19 miles of levees and 13 miles of new channel. I can't answer the question as to the capacity of the new or artificial channel. The slope of the channel is to the westward. I don't remember the rate of grade. It empties into the old channel at Romeo. Of course, that is not a continuous artificial channel. There are parts of the old
 2433 channel that come into play there. I am acquainted with a stream known as the Calumet River. It rises in the State of Indiana. It has two branches; both rise in the State of Indiana; flowing in a westerly, southwesterly direction, then curving to the north and changing to a northeasterly direction and emptying into Lake Michigan at
 2434 South Chicago. About 12 or 13 miles south of the point where the south branch of the Chicago River enters Lake Michigan.

Q. You may state to the court what work, if any, the

defendant corporation has projected relative to the district in which the Calumet River is located.

Mr. CHIPERFIELD: The defendant objects on the ground that the same is incompetent, irrelevant and immaterial and not tending to prove any of the causes of action raised in the plaintiff's declaration and for the further reason that the question refers to a time more than five years subsequent to the 17th day of January, 1900, when, if ever, the plaintiff's cause of action accrued in this cause, and at a time that would be barred by the statute of limitations of the State of Illinois."

Objection overruled; defendant excepts.

Mr. CHIPERFIELD: And for the further reason that the evidence sought to be elicited is not the best evidence, but that the proposed structures, improvements and creations of the Sanitary District, under and by authority vested in it, by the legislature of the State of Illinois, is better proved by the records, ordinances, orders and resolutions of the Sanitary District.

2435 Objection overruled; defendant excepts.

It is proposed to make a channel at a point near Blue Island, extending southwesterly, through what is known as the Sag Valley, to a junction with the Sanitary and Ship Canal at Sag Station, on the line of the Alton Rail-
2436 road. It is hard to say under whose direction it will be
2437 done. It is proposed to be done under my direction. The
2438 channel will be about 17 miles long. Its cross-section
2439 has not been adopted. I don't know approximately
2440 what it will be. It has taken no steps to acquire the right
2441 of way other than to have the property appraised. The
purpose of the proposed channel is to reverse the flow of
the Calumet River.

Q. From what to what will that proposed channel cause the water of the Calumet River to flow?

Mr. CHIPERFIELD: The defendant objects on the ground that the same is incompetent, irrelevant and immaterial, and not tending to prove any of the causes of action raised in the plaintiff's declaration; and for the further reason that the question refers to a time more than five years subsequent to the 17th day of January, 1900, when, if ever, the plaintiff's cause of action accrued in this cause, and at a time that would be barred by the statutes of limitations of the State of Illinois; and for the further reason that the evidence sought to be elicited is not the best evidence, but that the proposed structures, improvements and creations of the Sanitary District, under and by authority vested in it by the Legislature of the State of Illinois, is better proved by the records, ordinances, orders and resolutions of the Sanitary District.

Objection overruled; defendant excepts.

It will cause them to flow in a southwesterly direction, away from Lake Michigan; discharge them into the channel already built by the Sanitary District of Chicago.

How much water will it be necessary for that proposed channel to carry in cubic feet, per second, in order to accomplish the purposes of the defendant corporation?

Mr. CHIPERFIELD: The defendant objects on the ground that the same is incompetent, irrelevant and immaterial, and not tending to prove any of the causes of action raised in the plaintiff's declaration; and for the further reason that the question refers to a time more than five years subsequent to the 17th day of January, 1900, when, if ever, the plaintiff's cause of action accrued in this case and at a time that would be barred by the statutes of limitations of the State of Illinois; and for the further reason that the evidence sought to be elicited is not the best evidence, but that the proposed structures, improvements and creations of the Sanitary District, under and by authority vested in it by the Legislature of the State

of Illinois, is better proved by the records, ordinances, orders and resolutions of the Sanitary District; for the further objection that the question assumes a hypothesis not proved by the evidence in the case, and that there has been no sufficient foundation laid for the answer to the question.

Objection overruled; defendant excepts.

A. There has been no estimate made yet.

2446 Q. What will be the effect if that channel is constructed upon the waters in the main channel of the Sanitary District below Sag, to increase or decrease them?

Mr. CHIPERFIELD: I object to the question as leading and suggestive, as referring to improvements to be constructed in the future at a time more than five years subsequent to the 17th day of January, 1900; as calling for the conclusion of the witness upon a hypothesis not supported by the evidence in the case; and as a plain attempt of counsel to prejudice the cause of the defendant by referring to matters and things that are improper for counsel to refer to in this proceeding.

Objection overruled; defendant excepts.

A. That will result in the mingling of waters flowing from the Chicago River and the waters flowing from the Calumet River.

Q. How, if any, will it increase the water in the Sanitary District channel below the Sag?

Mr. CHIPERFIELD: I object to the question as leading and suggestive; as referring to improvements to be constructed in the future, at a time more than five years subsequent to the 17th day of January, 1900; as calling for the conclusion of the witness upon a hypothesis not supported by the evidence in the case; and as a plain attempt of counsel to prejudice the cause of the defendant by referring to matters and things that are improper for counsel to refer to in this proceeding.

Objection overruled; defendant excepts.

A. That is a matter which is under the control of the Sanitary District, and I am unable to say that it would increase it at all.

2449 I have no opinion as to what people not now in office will do when they come in office. None of the territory between Blue Island and the Sag was in the original area of the Sanitary District, as first organized.

2453 It is not within my knowledge at the present time how much additional territory to be drained under the supervision of the Sanitary District of Chicago is proposed to be taken in by the proposed channel in the Calumet River; something over ninety square miles has been added to the original territory of the Sanitary District of Chicago in
2454 the Calumet district. It was authorized at the session of the Legislature two years ago. My recollection is the bill became a law about the 15th of June, two years ago.

The bottom of the channel at Robey street is 24.48 feet
2455 below said dam. The memorial now shown me, marked Plaintiff's Exhibit 9, was prepared by some one other than myself and was not submitted to me before it was
2456 published. I did not compile the memorial. I was not asked to furnish the data for it, nor was the memorial
2457 submitted to me when it was published for revision. It has a familiar look, but I was not called upon for any of the engineering data contained in Exhibit 9. I take it
2458 for granted that the cross sections of noted canals, appearing on the second page of Exhibit 9, came from the drafting department of the Sanitary District. They look like productions of the large sheets which we have, illustrating those canals. The drafting department is a
2459 part of the engineering department of which I am chief. The cross section of noted canals, including the Chicago Sanitary and Ship Canal, appearing upon the page
2460 shown, are correct. I believe that the sheet attached to and a part of Exhibit 9, which has been shown me, was

prepared under the direction of Mr. E. L. Cooley, during
 his term as a member of the Sanitary Board. He was at
 one time the chief engineer of this board and was very
 well up in all this sort of thing, and I think it was com-
 2461 piled under his direction. I am not acquainted with the
 Illinois River at a point at or near Lake Joliet, to its
 confluence with the Mississippi River. I am acquainted
 with portions of it. I am acquainted with the portions
 near Desplaines, near Marseilles and a portion near Ot-
 tawa; a portion near Utica, a portion near La Salle, and
 I have several times made the trip from La Salle to the
 2462 mouth of the river, going all the distance by boat. On
 one occasion measurements were made of the current
 along the Illinois River under my direction; on one oc-
 casion the measurements were followed through to the
 mouth of the river; on one occasion that I know of, by
 2463 means of floats; I was not with the party; I did not see
 them put in. A report was made to me by the men who
 did follow the floats. Mr. E. H. Heilbron was in charge
 of the party. I don't recall the names of all the men
 who were with him at the time. A man named Smith
 was with him. I am not sure whether Atkinson was with
 him or not. I think he was. I do not recall now who the
 2464 other men were, but I think those two were with him.
 Mr. E. H. Heilbron is a civil engineer. He was in charge
 of the party. My recollection is it was in June, 1903. No
 other or different measurement by float has ever been
 made under the management and direction of my depart-
 ment by the defendant. The reports of the result ascer-
 tained by that measurement were in writing. They are
 2465 somewhere in my files. The reports were made at the
 end of the trip, in one report. The right of way of the
 defendant corporation, the Sanitary District of Chicago,
 from Robey street, Chicago, to Hickory Creek on the
 south limits of the City of Joliet, is very irregular in its

width. It is probably about a quarter of a mile, the average width. At the widest point, 2,200 feet; at the narrowest point, 800 feet; through Joliet we have not a width of 800 feet; there is simply the width of the stream, a little over 200 feet. The Sanitary District of Chicago is in possession of the right of way I have described between Robey street, Chicago, and Hickory Creek, on the south limits of the City of Chicago.

Cross-examination waived.

(Signed) ISHAM RANDOLPH.

2467 WILLIAM M. CHRISTIE, deposition offered by the plaintiff:

Direct Examination Read by Mr. Butters.

My name is William M. Christie. I am forty-one years of age. I reside in La Grange, Illinois. I am a photographer; about seven or eight years. I make a specialty of engineering photography; since 1898 I have been working for the Sanitary District. I was in their employ from August, 1898, to April, 1901, in photographic work. I made probably a thousand negatives during that period. I photographed Exhibit 12 shown me. It was taken on the north side of the canal, what is known as Section 2 of the Drainage Canal, July, 1896. I set the camera, focused it and made the exposure. The picture is correct. I retained the custody of the negatives from that time until the present time. I did the developing; used the rectilinear lens in making the picture. The excavation where the picture was taken was partly rock and partly earth. I don't know exactly the depth of the canal at that point. I should say approximately thirty-five feet. It was 160 or 162 feet wide at the bottom. I have been in possession of the exhibit and it correctly shows the situation at that point. I made the picture

2478 marked Plaintiff's Exhibit 13. It shows that portion
of the Sanitary District channel known as the controlling
2479 works and Bear Trap Dam near Lockport. I have been
acquainted with the situation there since 1898; possibly
before that some. I remember the occasion of the turn-
ing in of the water over the Bear Trap Dam on the 17th
2480 of January, 1900. I was there after the water was
turned in. After the dam was opened the water was
flowing over the dam. The negative for Exhibit 13 was
2481 taken on the 27th day of January, 1900. The camera
was placed below the dam on a table or platform formed
by the concrete in the construction of the dam; no bridge
had been constructed at that time. I think that seven-
eighths of the field of the dam was within the lens of the
2482 machine. I refer to the crest of the dam. The water
2483 was running over the dam at the time the photograph
was taken. There was a gauge there at that time indi-
cating the amount of water flowing over the dam. I was
able to read the gauge. It showed 2.7 feet. I made a
2484 memorandum at the time. This forms a part of the pho-
2485 tograph by being written on the photograph. I placed
the negative number on the photograph and the descrip-
2487 tive matter. The work of taking the picture was correctly
done. The picture correctly and truly represents that
portion of the controlling works within the field of the
lens. I am acquainted with that part of the Sanitary
District channel was just above the controlling works.
2488 It was called the windage basin. I think it is something
over 400 feet wide. It connects with the main drainage
2489 channel. There are seven sluice gates there through
2490 which the water passes. That is in addition to the Bear
Trap Dam. There are eight blind gates filled with con-
crete bulkheads. I took a picture of the windage basin
and controlling works and lower end of the canal. It is
marked as Exhibit 14. At the time that picture was taken

the camera was on the bank of the canal at the end of
2491 the controlling works, at the end of the windage basin,
about twenty feet from the edge of the canal. I took
three negatives. I focused, set and made the exposure.

The work was correctly and properly done. The nega-
2492 tive on the right was made first, marked 14 A. The one
forming the center of the panorama was made second,
2493 marked 14 B. The portion marked 14 C was taken last.

This kind of a view is known as a panoramic view. I
2494 developed the negatives and they have been in my pos-
2497 session since they were made. The windage basin is
bound by a concrete retaining wall, approximately
eighteen feet high and four feet wide on top. I have
been acquainted with the wall since '96. There is a rail-
2499 ing or fence with iron bars on top of the two walls I
2500 have described; about thirty inches high. The upstream
portion of the controlling works is shown in Plaintiff's
2501 Exhibit 14. The Bear Trap Dam is not shown. That is,
2502 the opening is shown. The buildings in connection with
the Bear Trap Dam and what is known as the tower house
in connection with the sluice gates and the upper works
2503 of the sluice gates are shown. The operating house of
the dam is also shown. No portion of the dam proper is
shown. As I said before, the upper works of the sluice
gates and the building in which the machinery operating
2504 the dam is housed or located is shown. At the places
referred to in Exhibit 14 marked 1, 2, 3, 4, 5, 6 and 7 are
what is known as the blind gates, blind sluice gates, or
those not in use. There are no gates there, but they are
2505 called blind gates. The dam is not shown because of
the water flowing over it, it does not show. A bridge
has been erected across the opening in front of the dam
and building or buildings have been erected over the ma-
2506 chinery and counterweights at one side of the dam. I
have seen, since the bridge was constructed, the Bear

Trap Dam of the defendant corporation in operation five or six times a year; possibly more; sometimes oftener 2507 than that. The flow of the water over the Bear Trap Dam is not as wide as the span of the bridge. The bridge is approximately fifteen feet longer than the dam. At the time of the taking of the negative for the panoramic view, Plaintiff's Exhibit 14, I didn't notice the water gauge on the dam. The water was running over the dam.

Plaintiff offers in evidence Plaintiff's Exhibits 12, 13 and 14.

The defendant objects to the same and to each of the same for the reason that each photograph is incompetent, irrelevant and immaterial and does not tend to prove any of the plaintiff's causes of action, and for the further reason that no proper or sufficient foundation has been laid for the admission of either or any or all of said photographs; objection overruled; defendant excepts.

2508 Cross-examination waived.

(Signed) WILLIAM M. CHRISTIE.

2509 Exhibit 18.

2510 Exhibit 19.

2511 Exhibit 20.



Exh. 18



10592-15 157-1540 3rd Trip

perch

of water at crest 2.7 ft.

Exh. 19



Exh. 20

2514-2518 Argument of Mr. O'Connor on the admissibility of tax receipts.

2520-2527 Argument of Mr. Chipperfield on the admissibility of tax receipts.

2528-2530 Argument of Mr. Butters on admissibility of tax receipts.

2530-2540 Statement by the court with reference to the admissibility of testimony, as follows:

The COURT: This very situation was foreseen by me the very minute, I may say, the very second, that the first question was asked Mr. Hazen about the payment of taxes. The very minute, I think I am literally accurate when I say the very second the first question was asked, the whole situation dawned before me just like a flash.

I am in the situation that Mr. Chipperfield said he was when Mr. O'Connor proposed to bring this motion before the court. I am hardly ready to express myself, not so much because my mind is not pretty well settled on this subject, but because of my inability to select just the right words to present conspicuously the view I have of the matter. Apologizing in advance for what might be imperfections in my expression and inviting you to the central thought of what I say, I will state what I think about this matter. The measure of damages and the course of proof to establish it as a rule is plain and I think is conceded by both sides. Notwithstanding that general proposition, I think it is true that if the land for any purpose has been depreciated in its market value, the plaintiff is entitled to the damage resulting therefrom, although for many other purposes the land in value may remain the same.

When the cross-examination of the first couple of witnesses began in this case, on the question of the market value of the land, and the plaintiff's alleged damages, I

was nearly driven from my propriety by the objections to the questions on the cross-examination when the witnesses were asked if it was not worth something for coal purposes, if it was not worth something for gardening purposes; a long line of objections were imposed and my compliments in the judgment of plaintiff's attorney on the subject nearly drove me from what I am now satisfied was the right view of the situation, and I many times since congratulated myself that I overruled those objections.

The same is true as to the question as to the rental value. I am confident that it was admissible on cross-examination and that it would not have only been error for me to have sustained those objections, but I think it would have been unjust to the defendant to have excluded those matters from the jury and the court.

I sustained an objection to a question, perhaps more than one, as to the assessed valuation of the land, as to what the land was taxed at, and I think rightly. If the defendant had offered these tax receipts I should have excluded them. If they should offer to prove on direct examination, when it comes to their case, what the land was worth for coal purposes, I will exclude that, because that is not the measure of damages; that is in consideration affecting the testimony of the witnesses and their opinions, which I concede was a proper matter for inquiry on cross-examination.

But that these tax receipts were admissible on cross-examination I think is hardly subject to debate.

The question that is now in my mind and has been in my mind from the beginning as to whether they are admissible for all purposes for which I can well foresee they may be used by the defense. If it is true, as suggested by Mr. O'Connor, that this whole question of title is not for the jury, they have nothing to do with it, then

I think his view of the matter is right; but, if the question of title is a matter for the jury, as well as other questions, then I am in doubt what limitation, if any, I should put on those tax receipts. I am under the impression that it is proper for me to state to the jury that the assessed values have nothing to do with the market values of this property and is not a matter for their consideration. But, as to the amount of taxes that were actually paid, I have grave doubts about that. It seems that proof of elements like renting value, coal value, gardening susceptibilities and all those things are elements to be considered; that is the way I view it now. I know that the valuation put on this property does not tend to prove its market value legitimately in law as well as in principal, and I repeat that the first question had not been answered before I foresaw this whole situation just as I see it now, just exactly. I haven't been on the bench so long but what I know what lawyers like to do.

If this whole question of title is to be excluded from the jury then I will, without question, have no hesitancy in excluding these receipts from them; but I think that the amounts actually paid, like rental value and such things like that, I am free to say about that, I am in doubt as to that subject a little. But as I am advised at present, I think I am willing to take a positive stand in any event against the assessed valuations of the land and the tax receipts being used by the jury for any purpose. It is simply a question if a witness says it is not worth the taxes and the labor, it seems to me they have the right to ask him how much the taxes are. Of course, that is a question independent of the assessed valuation.

I have expressed no opinion about the question of title; I haven't any very settled opinion about that, but I suppose that question does not need to arise just now, anyway.

If a witness on the stand should state, as some of them have, that the taxes and the labor of cultivation exceeded the value of the land, I would have to forbid the question, on cross-examination, what is the expense of the cultivation of that land; what is the labor; what is the amount of taxes. I would feel as if it would be error; I feel it would be an unjust limitation on the right of cross-examination. It may be a question so close that the higher court will say it is not reversible error. There is so much in this case that would not reverse the case because of that ruling on that subject. I believe that is all. I think that is the most that could be said in favor of that ruling on my part that way.

I know what I have stated is not very satisfactory to either side, because it still leaves them in doubt, but the reason for that is that is the position of the court. The jury is not here. I do not say anything on the subject. I will not make any final ruling until I am called upon to. I doubt whether there is much of anything either of you can say on the subject that would change my mind, because my opinion arises from the consideration of the whole situation of the case. The plaintiff's lawyers know, as well as I do, if they had offered these tax receipts or offered to prove the assessed valuation, that I would rule it out. I have already done that. So I agree with you on the subject, on the main question, that it is not substantive, independent original evidence with them. I think it is legitimate and proper because it is intimately associated with, connected with the cross-examination, and I state again I have many times since congratulated myself to think I allowed Mr. Chipperfield to ask the witnesses if there was not coal on the land that was valuable, when they said it was worthless. He asked them what the rental value was. I am sure that was proper, as I see it. Of course, that is as far as I can

go and I might be wrong from the beginning, but if I feel right here, that is satisfactory to me, and I do feel right about that.

Now, any time you want to take up this question of title, I will hear you. If you are right on that, of course, this evidence as presented by you and cross-examined by the defendant on the question of title, is that is confined to the court, that is a different proposition.

MR. CHIPERFIELD: May I suggest, your Honor—

THE COURT: Yes, sir.

MR. CHIPERFIELD: Your Honor, this is informal before the court and I think it better not go in the record at all.

THE COURT: Well, I went into the record.

MR. CHIPERFIELD: All right, I am perfectly willing for this to go into the record.

THE COURT: Let it all go.

MR. CHIPERFIELD: I was simply making it now for the convenience of all concerned in the case. I understood your Honor to say in the opinion that if independent proof was offered as to the value of this land, as a coal proposition, it would be rejected?

THE COURT: I don't think on the market value—I agree with you it must be the market value for all purposes.

MR. CHIPERFIELD: Just let me inquire this, because I want to get this in in the shortest possible shape when we get to our case. I am really inquiring more for information than for any other purposes, so we can frame up our case in such form as to accelerate this case. Let me suggest, your Honor, merely that I want to show this upon the question of value.

THE COURT: I think I will let you prove that.

MR. CHIPERFIELD: Sir?

THE COURT: I think I will let you prove that; they have gone into the market value of the land.

Mr. CHIPERFIELD: Yes.

The COURT: You can make the same proof. I don't know what is in the mind of the witness.

Mr. CHIPERFIELD: I see the point. I see the point. It is their responsibility.

The COURT: Yes, sir; not mine.

Mr. CHIPERFIELD: I get the point. Now, while we are here without anything to divert our minds on the matter and without the jury—

The COURT: I think it would have been error to have let Mr. O'Connor say, "What is the market value of that land for agricultural purposes?" I am not sure of that, and I think the same thing applies to the market value of the land for coal purposes.

Mr. CHIPERFIELD: Would it be well for us to take up at this time the production of those documents?

The COURT: Better wait until you get through with the plaintiff's case, hadn't you?

Mr. CHIPERFIELD: I am agreeable. Anything the court wishes is agreeable to counsel.

The COURT: This is a quit claim opinion I am giving and I am not bound by these individual separated statements. I have been talking with perfect freedom here and there may have been a great many things I have said that, when I review it, will not correctly and accurately reflect my views, but you have my central idea of the situation.

Mr. CHIPERFIELD: I appreciate the frankness with which the court has made his statement, and in the making up of the record, if your Honor wants any part of it expunged, I am perfectly willing.

The COURT: No, the record may stand. You may think some of my rulings are in conflict with what I have said, but you cannot use my statements for an authority for any proposition, that is what I mean.

Mr. CHIPERFIELD: No, we will not, at any stage of the proceedings.

The COURT: I wasn't considering it that way. I was trying to tell you the best I could just how I view it.

Mr. CHIPERFIELD: And I regard the idea of the court as very helpful all around and we will conform to the ideas of the court as far as we can.

Mr. BUTTERS: May I make a suggestion? While the court was talking an idea occurred to me that I want to express. Any proof as to the products that have been raised on this land subsequent to 1900, the amount and actual realization from them, that, as I understand it, is not really to be considered at all. My view of it was that that has been with the idea, if it was after 1900, it was purely an evidentiary matter, that the amount of corn raised on the land for one or more years could not be figured up for the purpose of obtaining a set off of that amount against the taxes, or anything of that kind, or determine a credit or anything that the witness might mentally subtract to ascertain what the value was in 1900, but simply the market value determined as if the jury had in their possession on January 17, 1900, all the facts that so and so—that have been since seen to be true.

Mr. CHIPERFIELD: In other words, foresight?

Mr. BUTTERS: Yes, but that they would not have the right to make a computation of the earnings, receipts, etc.

The COURT: Oh, no, there is nothing of that kind in the case.

Mr. BUTTERS: That is why I think the tax receipts—

The COURT: Oh, no, we can't do that, it is only admissible as—

Mr. BUTTERS: Evidentiary matters.

The COURT: They are corroborative.

Mr. BUTTERS: And on that view I couldn't see why it would be material to put in evidence as an issue how much the receipts were over the expenditures, any more than to give the witness the general view as to his testimony.

Mr. CHIPERFIELD: We are entitled to know the basis, and when we have that we are entitled to know anything else, so that we have all of this basis.

The COURT: Call the jury.

(Jury returns to the jury box.)

2541 NICK BUSGEN, a witness called by the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Nick Busgen. I live three and a half miles south of La Salle. I am twenty-two years old. I am a gardener. I farm land lying west of the Illinois Central and south and east of the Illinois River; rent it from the La Salle County Carbon Coal Company; from 1905 to 1910. My uncle and myself farmed the first year in part-
 2542 nership. I had it four years alone. We started to plant in 1905 in May, early in May. Got the second part of the crop in the latter part of May or about the first of June. Supposed to be eighty acres in the piece I had rented. I got forty to forty-five acres in crop. During
 2543 that year we got soft corn. That is, it didn't get ripe. There was worms in the corn that year, too. I worked the same piece during the year 1906. It was a good year; fine year; had a good crop in that year and had all of the land planted. We had seventy-five acres plant-
 2544 ed in corn. It was pretty fair, pretty good corn that year. We had the same piece of land in 1907; got in on it to plant about the last of May. It was then wet and boggy. Planted about thirty-five to forty acres. The

corn didn't mature that year. It was soft. Took the corn off about the last part of October. The ground was wet when we were husking. I had the same corn during
 2545 the year 1908. We got in on corn that year around June. We planted about forty acres in that year to corn. It didn't mature; we got a soft corn; picked the corn off about the first of November. I had the same piece during the year 1909. We didn't get in on the
 2546 ground until the first of June. Got about thirty-five acres planted that year. The corn didn't mature. The ground was soft and wet. The corn was soft to husk. I was there also in the year 1910. Worked that same ground that lies west of the Central and south of the river; got in there about the last part of May; planted
 2547 about forty acres. The corn was soft that year. We started to husk about the first week in November. The ground was wet.

Cross-Examination by Mr. Chipperfield.

We farmed that land last in 1910. We planted about forty acres in 1910. There wasn't over twenty-five bush-
 2548 els of corn. The corn we got, we took part of it home and some of it, the company's share, we took to their place. Their share was one-third. I think we got 25 cents a bushel for it that year, in 1910. In 1909 we got
 2549 in about forty acres. We didn't get much corn that year, either; had poor corn. I guess we got about thirty bushels to an acre. We took our share home and sold it. I think we got 30 cents a bushel for it. In 1908 we got in thirty-five acres; yes, forty acres. In 1907 we had thirty-five acres. The yield ran about
 2550 the same as it did in 1909. We sold our share of the corn. In 1906 we got on the land early. The water had come up in the spring and went down and we got on the land early to plant. The land was dry and we got

2551 it all planted. I have seen the water lower than it was
 during 1906. I think the water, during 1906, got down
 to within four or five inches. That was as low water as
 I have ever seen on the Illinois River. 1906 was a dry
 2552 year. 1907 was a wet year. There was some trouble
 2553 getting in crops on the upland. In 1906 we raised about
 sixty bushels of corn to the acre. We got 37 cents a
 bushel for it. The corn in 1905 was drowned out in
 May. Some places the water was three feet deep on
 the land and other places it was only a foot. The land
 2555 we had was between the Q. and the Central, right east
 of the Central. We had about a sixty acre patch. We
 also had thirty acres on the north side of the C., B. & Q.
 2556 We called it thirty acres. The land north of the C., B. & Q.
 is high. It is affected by the high waters. It is higher
 than the land on the south side of the Q. railroad. About
 four feet higher than the rest of the land. The corn
 2557 was pretty fair in that piece; better than on the south
 side. We could get in three or four days before we
 could get in the other piece. Bottom corn does not ripen
 as fast as it would on top land. I think it takes longer.
 2558 The bottom lands take a longer time and the corn don't
 harden up like top lands, prairie lands. I paid one-third
 2561 rent for the use of this land. We cultivated right up
 to the waste bank off the mine. I think that bank was
 there since 1907.

2562 AUGUST LAVENS, a witness called by the plaintiff, testi-
 fied as follows:

Direct Examination by Mr. O'Connor.

My name is August Lavens. I live four and a half
 miles south of La Salle. I am a farmer; forty-two years
 old, and have lived in this country twenty years next
 spring; farmed land belonging to the La Salle County

2563 Carbon Coal Company. I am a Belgian. The land I farmed would be west of the Illinois Central right of way and south and east of the river. I started farming that in 1906. I farmed it six years straight. I quit last year. I think I planted about sixty acres in 1906. I got in on the ground about May. It was a dry year; got a pretty good crop; corn matured and got good corn. I 2565 was there in 1907. After the first year I got in pretty late every year. I got about the same amount of land into crop. After the first year I wasn't able to get as much land planted. I had one pretty bad year in there. 2566 I had only about thirty acres in there one year. I am not sure if it was the second or third. I planted pretty near the same amount every year except the first year. The last five years I raised poor corn. It was soft corn; corn that would not keep in the crib. We got off the 2567 ing up. I got all the help I could and got it out. I think the water came up in November. I didn't farm it this year.

Cross-Examination by Mr. Chipperfield.

2568 In 1906 I think I raised around 3,300 bushels on about sixty acres. I kept the corn until it froze up and shelled it when it was froze up. I shipped it. I don't remember the price I got for it. I think the bad year I had was the second or third year. I think it was 1907. It was a very wet year; got in about thirty acres that year. I 2569 got about 1,800 bushels of corn off the thirty acres. We shipped the corn that year. We got about forty to forty-five acres in 1908 and in the other years that I was there. I got a couple of times about 2,500 or 3,000 bushels from the forty-five acres planted. I shipped it every 2570 year. Mr. Caskert shipped it for us. He said it didn't grade at all. We got around 50 cents a bushel for it. We started to work on there about the 15th of June in

every year. The water was off by the first of June. The water never came up before the first of November. Yes, we could cultivate it all right. I don't think that corn
 2571 ripens quicker on the bottoms than it does on top lands. I was farming right along the Illinois River. I think the river was maybe six or eight feet below this land.
 2572 That is, the low water in the summer time.

RENA SMITH, a witness called for the plaintiff, testified as follows:

Direct Examination by Mr. O'Connor.

My name is Rena Smith. I am thirty-eight years old. I have lived in this country about twenty-three years.
 2573 I live on the coal company's place across the river. I am farming some land this year on the bottoms for them. It is on the west side of the Illinois Central. I never saw Exhibit 13 before. The land I am farming is south from the river and west from the Central. I have husked corn in on this land before this year; never actually farmed it. This year I have plowed the land in spots; got in on the land about the first of June. There
 2574 was water in places. It took me about three weeks to
 2575 do my plowing. Got in about forty-three acres; planted it to corn. I husked some of that corn this year. The condition of it is soft. It can't get ripe, you know. I had to plant some of my corn over on account of the worms eating it; about half of the corn is soft. I planted
 2576 the corn late.

Cross-Examination by Mr. Chipperfield.

2577 Those worms I mentioned were copper worms. I think that the water brings the worms there. I think the water produces the worms. On the high spots there is no worms; just where the water stayed long. I haven't

2578 all my corn husked yet this year. I think I will have about 1,800 bushels when I get it. I haven't hauled any of it to market as yet. The company have to come and measure the crop. I have about 700 bushels picked; pay one-third rent to the coal company. No water came up on the corn in June this year after the land was planted.

2579 There is no water there now. It was a late spring for planting corn on the top land. I think that it takes
2580 about the same time to raise a crop on the bottoms that it does on the uplands.

2581 The following proceedings were had out of the presence of the jury:

Mr. O'CONOR: We wish to strike from the declaration concerning which no proof has been offered in this case, that part of the southwest quarter and the southeast quarter of Section 14, lying south of the Illinois and Michigan Canal. Also Lots A and B of Canal Com-
2582 missioners' Subdivision of Section 15, and in each count they are out.

Motion granted.

Mr. O'CONOR: I don't want any mistake as to Exhibit 13. We would like the record to show that the 19.23 acres lying north and west of the Illinois River, in Section 23, are not included in the declaration and are not owned by the plaintiff and appear on the exhibit inadvertently.

Mr. CHIPERFIELD: We understand that is so, so there is no question about that.

2583 The COURT: Well, that is disposed of, then.

Mr. O'CONOR: I also wish to strike from the declaration the north 17.74 acres as shown on Exhibit 13 located north of the bayou in the northeast quarter of Section 21 and south of the Illinois and Michigan Canal.

Mr. CHIPERFIELD: No objection to that.

The COURT: Motion granted.

Mr. O'CONOR: In order that there may be no mistake about it, I wish the record to show that we are claiming no damage and have made no proof in relation to the 1.10 acres appearing on Exhibit 13 and located in the southwest quarter of Section 23, east of the Illinois Central right of way.

I wish the record to show we are making no claim and have offered no proof in relation to any part of the south half of the southeast quarter of section 23, except the north four and one-half acres of the south half of the southeast quarter.

I simply want to introduce in evidence at this time offer simply to be filed in the case order served on the district by Mr. O'Donnell. I presume I can do it at this time as well as at a later date. I think the statute, as 2584 it is now, provides that you can file the notice at the time motion is made for allowance of attorney's fees under the statute. Mr. O'Donnell is not here. His certificate appears here.

Mr. CHIPERFIELD: Well, now, we have certain notices which were served. I have them all in my possession and I will have Mr. Hawthorne compare, if you will let him take your notice, will have him compare them with ours and, if in accord with what we have, we will admit it without formal proof.

Whereupon said paper was marked for identification Exhibit 21.

2585 Mr. O'CONOR: And we are introducing this simply to have it for use at a later date.

Mr. CHIPERFIELD: Until the comparison is made, I would like to reserve the right to make objections, with the understanding the objections shall be made as of this time.

The COURT: Very well.

Mr. CHIPERFIELD: I would like to have a chance to inspect it.

The COURT: All right.

Mr. CHIPERFIELD: There are certain things I want to use there a minute when you are through. Where do you get title, gentlemen, as far as papers are concerned, to anything north of the north half of this piece of ground extending from here to the bayou, of the northwest quarter of 21? We have looked through your deeds with great care—

Mr. O'CONOR: I have looked that up.

2586 Mr. CHIPERFIELD: We cannot find any title at all of any kind for anything north of the half line there.

Mr. O'CONOR: I checked that up with the deeds and find that the deeds themselves do not cover that by description. The deeds were made in the year 1883 and we claim under the proof in this case, possession has been established since that date, the year 1883; adverse possession and the payment of taxes all the way from that date down to this.

Mr. CHIPERFIELD: You see the title was not in you until after—

The COURT: No sir.

Mr. CHIPERFIELD: The title would not ripen until after the cause of action accrued as to that, even on the theory of adverse possession. It would be an acquisition of title after, and even on that theory in 1903—

The COURT: Isn't it described in any of your deeds?

Mr. CHIPERFIELD: It is not.

The COURT: No color of title to it?

Mr. O'CONOR: As a matter of record?

The COURT: Yes, is there any paper?

Mr. O'CONOR: No paper title.

The COURT: Of any kind; no color of title?

Mr. CHIPERFIELD: No, absolutely none, unless we are

totally wrong in our inspection of these deeds. There
2587 is no title in this record that can be pointed out to that
piece of ground.

The COURT: How many acres?

Mr. O'CONOR: The deeds don't cover that on our
checking?

Mr. CHIPERFIELD: They don't on ours.

Mr. O'CONOR: That piece that lies up here in this
north half of 21.

The COURT: How many acres are there in there?

Mr. CHIPERFIELD: Somewhere around eighteen or
twenty. I would not pretend to say exactly, but that is
our figure on it.

The COURT: Do you claim adverse possession, pay-
ment of taxes since 1883?

Mr. O'CONOR: 1883, yes.

The COURT: Yes, to—

Mr. CHIPERFIELD: This would be 1903.

Mr. O'CONOR: Up to the present date.

Mr. BUTTERS: We claim possession under claim of
ownership.

Mr. CHIPERFIELD: Even that would not ripen until
after.

Mr. BUTTERS: The cases all hold that where there is
a continuity of possession for the twenty years, it makes
a good title.

Mr. CHIPERFIELD: It makes a good title but you get
your title to this after the cause of action has accrued,
2588 and that is held to be at the opening of the district, and
title acquired after that would not be the basis of the
suit.

Mr. BUTTERS: I can own land and get title to it by
verbal contract, without any writing at all, and maintain
a trespass for damages to it.

Mr. CHIPERFIELD: Well, that is not the question.

Mr. BUTTERS: The 6th Appellate holds that.

The COURT: Well, that is—

Mr. CHIPERFIELD: The question that we have got to settle here—

The COURT: I see what the point is.

Mr. CHIPERFIELD: I have a motion that. I just wanted to inquire for their position, if their position was any different from ours.

Mr. O'CONOR: You mean as to whether or not it is covered by the deeds?

Mr. CHIPERFIELD: Yes.

Mr. O'CONOR: No, it is not.

Mr. CHIPERFIELD: Well, that is understood then. I just wanted to see if there was any difference in the fact, before we go to the question of law.

2589 The COURT: I think the pleas remain unaffactive, the pleadings, on a motion to strike out.

2590 Mr. BUTTERS: We want to introduce the notice.

Mr. CHIPERFIELD: Oh, yes, but I want to check it up and put in the objections. It is understood it would be put in as of this date.

Mr. BUTTERS: You don't object to the service?

Mr. CHIPERFIELD: We have to get the originals.

The arrangement was this, we have the originals in our possession, a copy was served and Mr. Hawthorne is going to compare it with yours, as to the service, so that we will have the same rights as we would have as
2591 of this time.

Mr. CHIPERFIELD: Now, I have some motions, your Honor, while the jury is out that I would like to have appear to be made after these deeds are read, but it will save time, we can save time by taking that up now.

The COURT: Very well.

Mr. CHIPERFIELD: But I want them considered as coming at the end of all the evidence.

The COURT: Very well.

Mr. CHIPERFIELD: Now I want to move to exclude from the consideration of the jury Exhibit 1, for the reason that the same does not tend to prove the plaintiff's cause of action; that the said exhibit creates a variance between the allegations of the declaration and the proof offered; for the further reason that there is no proper foundation appearing in this record for the admission of said exhibit; because the same does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because the same is not properly acknowledged.

Exhibit 3, is that the deed from the Illinois Valley Company?

Mr. O'CONOR: Yes.

Mr. CHIPERFIELD: All right I want the same objection to stand, and you will write it, Mr. Reporter, with the 2592 permission of the court, write up the record as to Exhibits 3, 4, 5, 6 and 7, 8 and 9, have the objection restated to each of these exhibits. And also restated as to Exhibit 3, with the further addition, that Exhibit 3 does not purport to contain a description of the premises but refers to other deeds therein named which have not been properly or sufficiently identified as connected with the premises involved in this proceeding.

2593 Mr. CHIPERFIELD: I think I had better state all the motions at once while I am about it.

The COURT: No, I think we had better take them one at a time. I will overrule that motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. O'CONOR: I understand Exhibits 3, 4, 5, 6, 7, 8 and 9 are admitted in evidence by the court.

The COURT: Those are the ones that have been admitted, as I understand it.

Mr. CHIPERFIELD: Mr. Reporter, in your record put in 8. I don't think I had it in my typed copy here. I want it to state as to 8, too. What was Exhibit 2?

Mr. O'CONOR: The charter of incorporation.

Mr. CHIPERFIELD: Oh, yes.

Mr. O'CONOR: Do I understand these are in evidence?

The COURT: The deeds? I ruled before that the deeds went in.

Mr. CHIPERFIELD: This is a motion to exclude on the theory they are in.

The COURT: Yes, I understand. I think I will overrule the motion.

Mr. CHIPERFIELD: As to each?

The COURT: As to each of them: Repeat the motion to each and repeat the ruling to each motion.

2594 Mr. CHIPERFIELD: We move to exclude from the consideration of the jury Exhibit 3 for the reason that it does not tend to prove plaintiff's cause of action, that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of same; because same is not properly acknowledged; that said exhibit does not purport to contain description of the premises but refers to other deeds therein named which have not been properly or sufficiently identified as connected with the premises involved in this proceeding.

The COURT: I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the consideration of the jury Exhibit 4 for the reason it does not tend to prove plaintiff's cause of action; that it creates
 2595 a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

The COURT: I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the consideration of the jury Exhibit 5 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission
 2596 of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

The COURT: I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the consideration of the jury Exhibit 7 for the reason that it
 2597 does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation in this record for the admission of said exhibit; because it does not relate to the premises des-

cribed in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

The COURT: I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the consideration of the jury Exhibit 8 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

2598 The COURT: I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the consideration of the jury Exhibit 9 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

The COURT: I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

2599 Mr. CHIPERFIELD: We desire to move to exclude from the consideration of the jury the testimony of each and every witness upon the part of the plaintiff, with reference to the overflow of plaintiff's premises or to the injury of any crop, or of the condition of any crop, or of the value of any crop, or of the use to which plaintiff might have put such premises since the 17th day of January, 1900.

The theory on which this motion is made is that the cause of action of the plaintiff became completed upon putting into operation the permanent use of the improvement authorized by the statute.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: Now, I wish to move to exclude from the consideration of the jury the testimony of each and every witness upon the part of the plaintiff, with reference to the overflow of the plaintiff's premises or to the injury to any crop, or of the condition of any crop, or the value of any crop, or of the use to which plaintiff might have put such premises since the 1st day of July, 1902.

The theory on which this motion is made is that prior 2600 to the 1st day of July, 1902, the operation of the district was such that the effect of the use of the improvement was plainly perceptible.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: Now, we desire to move to exclude from the consideration of the jury the testimony of every witness upon the part of the plaintiff with reference to the overflow of plaintiff's premises, or to the injury of any crop, or of the condition of any crop, or of the value

of any crop, or of the use to which the plaintiff might have put such premises—

What is the date of the praecipe in this case? Isn't it the 11th? The summons is dated the 14th. —since the 14th day of January, 1905.

The theory on which this motion is made is that the cause of action at that time became complete and that if there is a recovery by the plaintiff it must be upon those causes of action which had accrued and those injuries which had been done prior to the date of the issuance of the summons in this case.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: Now, we desire to move to strike out and exclude from the consideration of the jury any and all evidence with reference to all overflow of the land in controversy in this case, for the reason that it is not shown by the evidence upon the part of the plaintiff what part, if any, of this overflow the defendant in this case is responsible for, but puts the burden of proof upon the defendant in this case to show what the quantity of overflow was and to determine where the responsibility for such overflow rested.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all the evidence of each and every witness with reference to injury to any crops upon the premises in question for the years 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911 and 1912.

Mr. BUTTERS: Read that to me, please.

Mr. CHIPERFIELD: We desire to move to exclude all the evidence of each and every witness with reference to in-

jury to any crops upon the premises in question for the years 1900, 1901, 1902 and then down to and including 1912.

The COURT: I think I will overrule the motion.

2602 To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: Now, then I want to restate that motion separately for each year.

The COURT: Very well.

Mr. CHIPERFIELD: That will be restated as many times as there are years from 1900 to 1912, inclusive.

The COURT: And you may repeat my ruling.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1900.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1901.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1902.

2603 The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to

injury to any crops upon the premises in question, for the year 1903.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1904.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1905.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all
2604 of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the years 1906.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1907.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference

to injury to any crops upon the premises in question, for the year 1908.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1909.

2605 The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1910.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1911.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We desire to move to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question, for the year 1912.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

2606 Mr. CHIPERFIELD: We also desire to move to exclude from the consideration of the jury all of the testimony

in reference to the quality of crops raised upon the lands in controversy at any time either prior to or subsequent to the filing of the declaration in this suit, for the reason that the same is incompetent, irrelevant and immaterial, and does not tend to establish any of the issues in this case.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the consideration of the jury all of the following described premises:

All of the north half—

The COURT: Let me see what this is.

Mr. CHIPERFIELD: That is this piece where there is no title.

The COURT: I see.

Mr. CHIPERFIELD: All of the north half of the northwest quarter of section 21, township 33 north, range 1 east of the 3d principal meridian, lying south of the Illinois River and east of the bayou, as the same appears upon Exhibit 13.

Now, in that matter if your Honor please, I don't care to argue it because the matters are known to the court 2607 and the court is as well advised without any argument from us as it would be with it. That is a part where there is absolutely no record of title in this case. We are denying especially ownership.

The COURT: That is the case where if they have any title by adverse possession it matured subsequent to the commencement of this suit?

Mr. CHIPERFIELD: Yes, sir.

The COURT: Subsequent to the—

Mr. CHIPERFIELD: Seventeenth day of January, 1903.

The COURT: I think I understand it.

Mr. CHIPERFIELD: All right.

The COURT: I am inclined to think I ought to overrule that motion, although I am not as well advised on the proposition as I ought to be, but I will allow the motion to stand as overruled for the present. If I conclude hereafter to reverse that I will notify both sides to that effect.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: I also want to move to exclude from the consideration of the jury the following described premises:

Lot 2 in the west half of the southwest quarter of Section 24, Township 33 North, Range 1, east of the Third Principal Meridian, La Salle County, Illinois, for the 2608 reason that no proof has been offered in this case to sustain the allegations of the declaration with reference thereto.

That is this little piece down here by the river and lying east of the C., B & Q. Railroad.

The COURT: No proof has been offered touching that?

Mr. CHIPERFIELD: There has been no proof offered upon that land.

The COURT: I am not prepared to speak with confidence in that matter. I must necessarily trust the judgment and advice of plaintiff's lawyers on that subject.

Mr. O'CONOR: If there is any doubt on that I want that witness to come back, your Honor.

Mr. CHIPERFIELD: I have no objection to that.

The COURT: Well, the record will show, if you want the record written up.

Mr. O'CONOR: I beg pardon.

The COURT: The record will show if you want the record written up. You can see it.

Mr. O'CONOR: He will get away at ten minutes to twelve.

And the court sustained said objection and excluded from the consideration of the jury the evidence as to lot 2 in the west half of the southwest quarter of Section 24, Township 33 North, Range 1 east of the Third Principal Meridian, La Salle County, Illinois.

2609 Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of W. A. Means upon the question of the value of the premises described in the plaintiff's declaration for the following reason:

First. That no sufficient foundation has been laid for the testimony of said witness for the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state, or attempt to state, the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

2610 *Fifth.* That the said witness did not include in the estimation of the value of said premises the coal contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in said deeds which

have been introduced by the plaintiff in this case, for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of an opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his testimony with reference to the value thereof, without disclosing the basis thereof to the court, the jury or counsel, but was permitted and
2611 required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury of the premises involved herein was required to take into consideration all overflow of the premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all the in-

jury which they claim had occurred to the said premises was caused by the act of the defendant herein.

Mr. BUTTERS: Whose testimony is that?

Mr. CHIPERFIELD: That is W. A. Means.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: I want to repeat that same motion
2612 to Joseph Grainer, Henry Ream, Henry Myer, Charles Mudge, Ed. Pyka, Charles Castendyck, Otto Halm, George W. Brown, Fred A. Mudge, M. J. Charley, Abraham Voorhees, Charles Dooley—what was the name of that Mudge who was on the stand later?

Mr. O'CONOR: Fred Mudge.

Mr. CHIPERFIELD: Oh, yes, I have got the other Mudge in there. That is all right. I want to repeat that, the full motion, in reference to each and every one of those witnesses, so you will please repeat it each time.

The COURT: And you will repeat my ruling.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Joseph Grainer upon the question of the value of the premises described in the plaintiff's declaration, for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness for the expression of opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

2613 *Fourth.* That in the expression of such opinion said witness adopted an improper basis; that is to say, that

said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which had been introduced by the plaintiff in this case, for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the
2614 use and adaptability for the purpose of raising corn.

Ninth. That in the expression of said opinion as to the values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing

of the declaration therein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

2615 To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Henry Ream upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and value of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from this opinion and refuse to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the value given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Henry Myer upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of the 2618 opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real, actual fair cash market value.

Fifth. That said witness did not include in the assumption of the value of said premises the coal that was con-

tained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That said witness did not exclude from the fair cash market value of said lands the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

2619 *Seventh.* That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony, with reference to the value thereof without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion which was based on matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, on the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

2620 *Eleventh.* That the said witness in the expression of his opinion as to the injury to the premises involved

herein was required to take into consideration the overflow of the premises described in plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule the objection.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Charles Mudge upon the question of the value of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of the opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion 2621 did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis. That is to say, that such witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the

fair cash market value of said lands the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion 2622 as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values, said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony, with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon his hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in plaintiff's declaration without reference to whether or not such overflow was

caused by acts under the discretion and control of the
2623 defendant in this suit, but was permitted to assume that
all the injury which they claim had occurred to said
premises was caused by the act of the defendant herein.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant, by its
counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Ed Pyka upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land
2624 would produce for agricultural purposes without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the

purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until 2625 the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to

said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

2625 Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Charles Castendyck upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of the opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that such witness expressed an opinion as to the value of said land merely from the standpoint of what the said lands would produce for agricultural purposes without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of 2628 matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury in the premises involved herein was required to take into consideration the overflow of the premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the discretion and the control of the defendant to this suit, but was permitted to assume that all of the injury which they say had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Otto Halm upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

2629 *First.* That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That the said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that such witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That the said witness would not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value
2630 on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the

fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to value said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing
2631 of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in plaintiff's declaration without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of George W. Brown, upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and value of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

2633 *Seventh.* That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opin-

ion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of the said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values, said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved here-
2634 in was required to take into consideration the overflow of the premises described in plaintiff's declaration without reference to whether or not such overflow was caused by acts under the discretion or control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Fred A. Mudge upon the question of the value of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of said opinion said 2635 witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint

of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in plaintiff's declaration without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

2637 The Court: I think I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of M. J. Charley, upon the question of value of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for

the testimony of said witness and the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereof.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion
2638 and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with reference to the value thereof, without disclosing the basis therefor, to the court or jury or counsel, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

2639 *Tenth.* That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Abraham Voorhees upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2640 *Second.* That said witness in the giving of said testi-

mony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that such witness expressed an opinion as to the value of said land merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the stand-
2641 point of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew of said premises until the

date of the giving of his said testimony with reference to the values thereof, without disclosing the basis therefor to the court or counsel or jury, but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit, the 14th day of January, 1905, up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in plaintiff's declaration without reference to whether or not such overflow was
2642 caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: We move to exclude from the testimony in this case the testimony of Charles Dooley upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

First. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

Second. That said witness in the giving of said testimony has shown no such acquaintance with the premises and value of real estate in that vicinity as to qualify him for the expression of an opinion thereof.

Third. That said witness in his expression of opinion did not state or attempt to state the fair cash market value of the premises involved.

Fourth. That in the expression of such opinion said witness adopted an improper basis; that is to say, that said witness expressed an opinion as to the value of said land merely from the standpoint of what the said land 2643 would produce for agricultural purposes, without reference to its real or actual fair cash market value.

Fifth. That the said witness did not include in the assumption of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

Sixth. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

Seventh. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

Eighth. That said witness in the expression of opinion as to the values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

Ninth. That in the expression of said opinion as to values, said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of his said testimony with 2644 reference to the value there, without disclosing the basis therefor to the court or jury or counsel, but was per-

mitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

Tenth. That said witness in the expression of his opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the time of the giving of his testimony.

Eleventh. That the said witness in the expression of his opinion as to the injury to the premises involved herein was required to take into consideration the overflow of the premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the discretion and control of the defendant to this suit, but was permitted to assume that all of the injury which they claim had occurred to said premises was caused by the act of the defendant herein.

The COURT: I think I will overrule that motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

2645 Mr. CHIPERFIELD: Now, we desire to move to exclude from the consideration of the jury all evidence with reference to the construction of the Ogden Dam or ditch, or other improvements therewith connected, including the spillway, on the theory that the evidence in this case shows that the construction thereof was completed before the year 1893 and that any cause of action thereby accruing would be barred by the statute of limitations and that the evidence shows the same to be and constitute an independent and separate work.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Now, I wish to move to exclude from the consideration of the jury the testimony of each of said witnesses and also to exclude from the consideration of the jury plat 13 and all the deeds that have been offered in evidence, for the reason that the same and each of the same tend to create a variance between the allegations of the declaration and the proof offered in this case; that there is not excluded from the description contained in the declaration in this case the right of way of the Illinois Central Railroad or the C. B. & Q. Railroad, but that the said declaration alleges ownership of the entire premises without reference to said rights of way.

2646 Mr. BUTTERS: May I have that read, please?

Mr. CHIPERFIELD: Yes, as far as I am concerned.
(Motion read.)

Mr. BUTTERS: We have offered no proof as to the right of way of the Illinois——

The COURT: I think I will overrule that motion. That may be a question for consideration in some phase of the case but I hardly think this motion reaches it.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Now, I have a motion to instruct the jury to find a verdict for the defendant at the conclusion of the plaintiff's testimony under the first count of the declaration.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Also under the second count of the declaration.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Also under the third count of the declaration.

The COURT: I think I will overrule the objection.

2647 To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: And then also a general instruction as to the entire declaration.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

The COURT: Have you got an instruction you want marked now?

Mr. CHIPERFIELD: Yes, I have four instructions.

Whereupon the defendant, by its attorney, moved the court in writing as follows:

STATE OF ILLINOIS,)
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.
October Term, A. D. 1912.

La Salle County Carbon Coal Company,
a Corporation,
 vs.
The Sanitary District of Chicago. } *Case.*

Now comes the defendant, the Sanitary District of Chicago, at the conclusion of the taking of the evidence on behalf of the plaintiff, in the above entitled cause, and
2648 moves the court to instruct the jury to return a verdict of not guilty in favor of the defendant, the Sanitary District of Chicago.

B. M. CHIPERFIELD,
Attorney for Defendant.

And ask the court to read and give to the jury the following written instruction:

The jury are instructed that, under the law and the evidence in this case, it would be your duty to return a verdict finding the defendant not guilty, and the form of your verdict will be as follows:

We, the jury, find the defendant not guilty.

Which motion the court then and there overruled.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

And the court then and there refused to give to the jury said above mentioned instruction asked by the defendant and marked the same refused.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Thereupon the defendant, by its attorney, moved the court in writing as follows:

2649 STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.

October Term, A. D. 1912.

La Salle County Carbon Coal Company,
a Corporation,
vs.
The Sanitary District of Chicago. }
Case.

Now comes the defendant, the Sanitary District of Chicago, at the conclusion of the taking of the evidence upon behalf of the plaintiff in the above entitled cause, and moves the court to instruct the jury to return a verdict of

not guilty in favor of the defendant, the Sanitary District of Chicago, under the first count of the declaration.

B. M. CHIPERFIELD,
Attorney for Defendant.

And ask the court to read and give to the jury the following written instruction :

The jury are instructed that, under the law and the evidence in this case, it will be your duty under the first count of the declaration, to return a verdict in favor of the defendant, and that the form of your verdict will be as follows :

2650 We, the jury, find the defendant not guilty under the first count of the declaration.

Which motion the court then and there overruled.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

And the court then and there refused to give to the jury said above mentioned instruction asked by the defendant and marked the same refused.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Thereupon the defendant, by its attorney, moved the court in writing as follows :

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.

October Term, A. D. 1912.

La Salle County Carbon Coal Company, }
a Corporation, }
 } *Case.*
 }
The Sanitary District of Chicago. }

Now comes the defendant, the Sanitary District of Chicago, at the conclusion of the taking of the evidence upon

behalf of the plaintiff, in the above entitled cause and
2651 moves the court to instruct the jury to return a verdict
of not guilty in favor of the defendant, the Sanitary Dis-
trict of Chicago, under the second count of the declaration.

B. M. CHIPERFIELD,
Attorney for Defendant.

And ask the court to read and give to the jury the fol-
lowing written instruction:

The jury are instructed that under the law and the evi-
dence in this case, it will be your duty under the second
count of the declaration to return a verdict finding the
defendant not guilty and the form of your verdict will be
as follows:

We, the jury, find the defendant not guilty under the
second count of the declaration.

Which motion the court then and there overruled.

To which ruling of the court the defendant, by its
counsel, then and there duly excepted.

And the court then and there refused to give to the jury
said above mentioned instruction asked by the defendant
and marked the same refused.

To which ruling of the court the defendant, by its
counsel, then and there duly excepted.

Thereupon the defendant, by its attorney, moved the
court in writing as follows:

2652 STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.

October Term, A. D. 1912.

La Salle County Carbon Coal Company, }
a Corporation, }
vs. } *Case.*
The Sanitary District of Chicago. }

Now comes the defendant, the Sanitary District of Chicago, at the conclusion of the taking of the evidence upon behalf of the plaintiff, in the above entitled cause, and moves the court to instruct the jury to return a verdict of not guilty in favor of the defendant, the Sanitary District of Chicago, under the third count of the declaration.

B. M. CHIPERFIELD,
Attorney for Defendant.

And ask the court to read and give to the jury the following written instruction:

The jury are instructed that, under the law and evidence in this case, it will be your duty under the third count of the declaration to return a verdict in favor of the defendant, and that the form of your verdict will be as follows:

We, the jury, find the defendant not guilty under the
2653 third count of the declaration.

Which motion the court then and there overruled.

To which ruling of the court the defendant, by its counsel then and there duly excepted.

And the court then and there refused to give to the jury said above mentioned instruction asked by the defendant and marked the same refused.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Before we get to this motion let the record show also a motion to exclude the deposition of E. L. Cooley, for the reason that E. L. Cooley was called in person by the plaintiff and gave testimony in this cause upon the hearing of the case.

The COURT: I think I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

2564-2663 Argument by counsel as to the necessity for the reading of the deeds to the jury and as to whether or not title of the plaintiff is a question for the court or for the jury.

IN THE
SUPREME COURT OF ILLINOIS,
APRIL TERM, A. D. 1913.

LA SALLE COUNTY CARBON COAL COMPANY,	} Appeal from Circuit Court. La Salle County. — Honorable S. E. Stough, Presiding Judge.
<i>Appellee</i>	
<i>vs.</i>	
SANITARY DISTRICT OF CHICAGO,	}
<i>Appellant</i>	

ABSTRACT OF RECORD.

Page of
Record.

2664 November 22, 1912, 1:30 P. M.

TESTIMONY ON BEHALF OF THE DEFENDANT.

Mr. CHIPERFIELD: I desire, if your Honor please, to offer in evidence, from the record of House Document No. 263, now in evidence as an exhibit by the plaintiff, pages 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, being the gauge reading at La Salle, Illinois, at Lock 15, showing the stage of the Illinois River for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1883, 1893, 1894, 1897, 1898, 1900, 1901, 1902, 1903 and 1904. * * * I want to offer it for all of those years.

2665 Mr. O'CONOR: We object to your reading it back any farther than the year 1885.

The COURT: I sustain the objection.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Said pages 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455 of said House Document No. 263 are in the words and figures following, to-wit:

GAUGE READINGS, ILLINOIS AND DES PLAINES RIVERS, ILLINOIS.

(29) LASALLE GAUGE AT LOCK NO. 15, ILLINOIS AND MICHIGAN CANAL.

This gauge was located at the lower end of Lock No. 15 of the Illinois and Michigan Canal. It was established by the United States Engineer Department in 1867, under the direction of which readings were taken from January 1, 1867, to December 30, 1868. From April 1, 1869, to November 30, 1877, readings were taken under the direction of the Illinois canal commissioners. For the period from December 1, 1878, to June 19, 1893, it has been impossible to find any records pertaining to this gauge, except for three months in 1883, which were taken by the United States Engineer Department during the survey of that year. From June 19, 1893, to December 31, 1904, readings were again taken under the direction of the Illinois canal commissioners. The readings taken under the direction of the Illinois canal commissioners are not continuous, but as a rule, cover only the navigation season of each year.

As established in 1867, the zero of this gauge corresponded to the low water of 1867. This has been determined indirectly from elevations of the water surface of the river in that vicinity, as shown by the level notes of the survey of the Des Plaines and Illinois rivers, made in 1867, in conjunction with a study of the readings which were taken on an old gauge at the lock during the time of that survey. These observations indicate that the low water of 1867 was 3.88 feet above the lower miter sill of that lock.

According to the survey of the Illinois and Des Plaines rivers made in 1902-1904, the elevation of the lower miter sill is 435.36 feet, Memphis datum, making the elevation of the zero of the gauge 439.24 feet, Memphis datum. The gauge remained at this elevation until November 30, 1877.

The readings which were taken by the United States Engineer Department in 1883 referred to the gauge established during the survey of that year, which extended from Joliet to LaSalle. According to the levels of that survey the zero of the gauge was 11.9 feet below

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1868.

[Location of gauge, Lock 15; in charge of United States Engineer Department; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioners' report for 1877-78.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1					7 9	8 5		0 7	0 3			
2					8 0	8 8		6	3			
3					8 5	9 0		5	4			
4				8 7	9 2	8 10		5	4			
5				8 7	10 0	8 11		5	4			
6				8 4	11 3	10 6		5	4			
7				8 2	14 1	11 2		7	4			
8				8 1	18 11	10 11		7	4			
9				7 9	19 1	9 11		6	7			
10				7 7	18 3	9 4		4	10			
11				7 4	17 8	8 11		4	10			
12				7 5	16 11	8 6		5	1 1			
13				as 1	16 2	8 2		5	1 0			
14				8 10	15 3	7 11		5	8			
15				9 7	14 8	7 6		5	9			
16				10 11	14 1	7 1		5	11			
17				11 1	13 7	7 1		4	11			
18				10 7	13 2	7 1		5	10			
19				9 11	12 9	6 8		6	8			
20				9 7	12 2	6 6		6	9			
21				9 3	11 8	6 3		6	7			
22				8 11	11 3	5 11		5	10			
23				8 3	10 10	5 9		4	10			
24				8 0	10 4	5 6		3	11			
25				7 8	9 11	5 2		2	10			
26				7 6	9 6	4 11		1	9			
27				7 3	9 7	4 7		1	10			
28				7 0	9 0	4 3		0	10			
29				7 2	9 1	3 11		1	8			
30				7 8	8 8	3 9		2	8			
31					8 5			3				

a Probably in error; should be 8 feet 1 inch.

1869.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioners' report of December 1, 1870, in the office of the secretary of state at Springfield, Ill., except for months of April and May, which were copied from said commissioners' report for the year 1877-78.]

[The figures show the height of water in feet and inches above low-water plane of 1867.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1				16 3	12 10	17 7	21 7	15 3	8 5	2 4	1 4	5 1
2				16 3	12 7	17 4	20 7	15 1	8 3	2 4	1 4	5 9
3				16 3	12 1	16 9	20 3	14 1	7 11	2 4	1 4	5 11
4				16 1	11 11	16 7	20 3	13 7	7 9	2 2	1 4	6 1
5				15 7	11 9	15 7	20 6	13 1	7 5	2 3	1 4	5 9
6				15 1	11 6	14 5	20 5	12 10	7 1	2 6	1 3	5 8
7				14 5	11 1	13 7	19 11	12 9	6 9	2 4	1 5	5 7
8				13 1	10 9	12 9	18 11	12 7	6 5	2 2	1 5	5 5
9				12 7	10 4	12 3	18 7	12 2	6 1	2 2	1 5	5 7
10				12 1	9 10	12 3	18 7	12 2	5 9	2 1	1 6	6 1
11				13 1	9 7	12 3	18 1	11 9	5 8	2 1	1 6	6 5
12				14 4	10 4	12 1	17 5	11 4	5 6	2 0	1 6	9 7
13				15 1	8 11	12 1	17 5	11 1	5 1	2 0	1 6	10 10
14				15 11	10 7	12 3	18 9	10 10	4 10	1 11	1 7	11 1
15				18 1	12 10	12 3	19 1	10 7	4 10	1 10	1 7	11 0
16				18 9	14 9	11 7	18 5	10 4	4 9	1 10	1 8	11 7
17				19 7	11 11	11 3	19 1	10 1	4 7	1 9	1 9	12 5
18				20 1	11 4	10 11	21 1	9 11	4 2	1 9	1 11	12 4
19				21 1	10 9	10 8	22 7	9 9	3 11	1 8	2 1	12 2
20				20 9	10 5	11 1	22 4	9 7	3 11	1 8	2 4	13 1
21				20 3	10 0	12 5	21 4	10 1	3 5	1 8	2 7	13 7
22				19 7	9 7	13 0	20 11	13 11	3 2	1 7	2 6	13 7
23				18 3	9 10	13 4	19 9	12 1	3 2	1 7	2 1	13 5
24				17 7	9 4	13 3	18 9	11 1	3 1	1 7	2 1	13 1
25				16 1	10 0	12 8	17 9	10 9	2 11	1 7	2 9	12 3
26				14 5	9 0	15 1	15 11	10 3	2 9	1 7	2 11	12 5
27				13 9	8 10	21 8	15 9	9 11	2 7	1 7	3 11	12 7
28				13 8	13 10	22 1	15 7		2 7	1 6	4 1	12 1
29				12 10	18 9	24 1	15 5	9 9	2 6	1 5	4 7	11 5
30				12 10	19 4	23 1	15 11	9 5	2 6	1 4	5 1	11 1
31					19 1		15 3	8 9		1 4		10 7

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1872.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioners' report for 1877-78.]

Day	Jan	Feb	Mar	Apr.	May.	June.	July	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>
1	5 5			7 1	6 2	5 1	4 9	4 8		5 4	4 7	4 7
2	5 4			7 1	9 2	5 1	4 9	4 7		5 3	4 7	4 7
3	5 3			7 1	6 1	5 3	4 9	4 7		5 2	4 7	7 7
4	5 3			7 7	6 8	2	4 9	4 7		5 2	4 9	
5	5 2			7 7	6 8	1	4 8	4 6		5 2	4 11	
6	5 1			7 8	6 7	1	4 7	4 7		5 5	4 11	6 6
7	5 1			11	6 7	0	4 6	4 6		5 5	4 11	6 6
8	5 0			11	6 6	5	4 6	4 6	4 0	5 5	4 11	6 6
9	0			7 10	5 3	4	4 6	4 6	5 1	5 5		
10				7 10	5 1	1	4 6	4 6	5 1	5 4	10	
11				7 8	5	8	4 6	4 5	6 0	5 2	9	5 5
12				8 1	5	3	4 6	4 5	5 9	2	9	5
13				7 8	5 4	11	4 6	4 6	5 6	5 2	9	
14				7 1	5 4	5	4 6	4 6	5 3	5 1	8	5
15				6 11	5 4	5	4 6	4 6	5 2	4 10	8	
16				7 0	5 4	5	4 6	4 5	5 1	4 10	8	5 5
17				7 2	5 5	5	4 7	4 11	5 0	4 7	5	
18				7 0	5 8	5	4 6	4 11	4 11	4 11	4 7	
19				0	0	5	4 11	4 9	4 11	4 7	5	
20				6	6	1	4 10	4 11	4 8	10	4 7	
21				1	5 8	4	4 0	4 10	4 8	9	4 7	
22				6 11	5 9	4	4 7	4 8	4 8	4 9	4 7	
23				6 9	5 8	4	4 7	4 8	4 9	4 9	4 7	
24				6 8	5 8	4	4 7	4 8	4 11	4 9	4 7	
25				6 6	5 7	4	4 7	4 6	4 11	4 8	4 7	
26				6 3	5 7	4	4 7	4 6	4 11	4 8	4 7	
27				6 1	5 5	4	4 6	4 5	1 10	4 8	4 7	
28				6 1	5 3	4	4 6	4 10	4 9	4 7	4 7	
29				6 1	5 3	4	4 6	5 1	5 1	4 7	4 6	
30				6 1	5 1	4	4 6	5 1	5 2	4 7	4 6	
31					5 1	4	4 6	5 0		4 7		

1873.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioners' report for 1877-78.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>
1					11 1	9 0	4 10	4 11	4 6	4 8	4 8	
2					11 7	8 8	4 10	4 11	4 6	4 8	4 9	
3					13 7	8 4	4 11	4 10	4 6	4 8	4 9	
4					13 4	8 1	5 5	4 9	4 6	4 8	4 9	
5					12 4	7 10	5 8	4 9	4 7	4 8		
6					11 10	7 4	7 1	4 8	4 7	4 8		
7					11 4	6 10	7 7	4 8	4 7	4 8		
8					10 11	6 6	7 2	4 7	4 7	4 8		
9					11 7	6 3	6 11	4 7	4 7	4 8		
10					12 3	6 3	6 6	4 7	4 7	4 8		
11					12 9	6 2	6 5	4 7	4 7	4 8		
12	1 5				13 1	6 0	6 1	4 7	4 6	4 8		
13	5 0				12 11	5 10	0	4 6	4 6	4 8		
14	5 1				11 8	5 8	6 11	4 6	4 6	4 8		
15	6 1				11 1	5 6	6 7	4 6	4 6	4 8		
16	9 1			16 1	10 9	5 5	5 7	4 6	4 6	4 8		
17	12 7	5 1		15 9	10 2	5 3	5 8	4 5	4 6	4 8		
18	11 9	7 1		14 11	9 9	5 3	5 7	4 5	4 6	4 8		
19	10 4	10 1		14 9	9 5	5 4	5 6	4 5	4 6	4 8		
20	10 1	13 1		14 9	9 6	5 3	5 2	4 6	4 6	4 8		
21		15 7		14 9	9 5	5 1	5 1	4 6	4 6	4 8		
22		14 1		14 9	9 3	5 1	5 1	4 6	4 6	4 8		
23		13 1		13 9	10 8	5 1	5 1	4 6	4 6	4 8		
24		12 1		13 4	11 3	5 0	5 0	4 6	4 6	4 8		
25				13 1	12 0	4 11	5 1	4 6	4 6	4 8		
26				12 9	11 6	4 11	5 1	4 6	4 6	4 8		
27				12 1	11 3	4 10	4 11	4 6	4 6	4 8		
28				11 7	11 2	4 10	4 10	4 6	4 6	4 8		
29				11 3	10 0	4 10	4 9	4 6	4 9	4 8		
30				10 11	9 6	4 10	4 9	4 6	4 9	4 8		
31					9 2		4 9	4 6		4 8		

Gauge readings, Illinois and Des Plaines rivers, Illinois Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL. Continued.

1874.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; copied by F. B. Duis from Illinois canal commissioners' report for 1877-78.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>
1.					8 0	5 1	4 9	4 6	4 5	4 3	4 7	4 5
2.					7 11	5 0	4 9	4 5	4 5	4 6	4 6	4 5
3.					7 8	5 1	4 8	4 4	4 5	4 6	4 6	4 5
4.					7 7	4 11	4 10	4 4	4 5	4 5	4 6	4 5
5.					9 0	5 2	4 7	4 5	4 5	4 5	4 6	4 5
6.					8 4	5 1	4 7	4 4	4 5	4 5	4 6	4 5
7.					8 1	5 1	4 6	4 5	4 5	4 5	4 6	4 5
8.					7 8	5 0	4 7	4 5	4 5	4 5	4 6	4 5
9.					7 3	6 0	4 8	4 5	4 5	4 5	4 6	4 4
10.					6 9	7 4	4 7	4 5	4 5	4 5	4 6	4 4
11.					6 7	7 5	4 7	4 5	4 5	4 5	4 6	4 4
12.					6 4	7 11	4 6	4 7	4 5	4 5	4 6	4 4
13.					6 3	6 6	4 6	4 6	4 5	4 5	4 6	4 4
14.					6 3	6 0	4 7	4 6	4 5	4 5	4 5	4 4
15.					6 1	5 9	4 8	4 5	4 5	4 6	4 5	4 4
16.					6 2	5 9	4 7	4 5	4 5	4 6	4 5	4 4
17.					6 3	5 7	4 6	4 5	4 5	4 6	4 5	4 3
18.					6 1	5 5	4 6	4 5	4 5	4 6	4 6	4 3
19.					6 0	5 4	4 7	4 5	4 5	4 6	4 6	4 3
20.					5 11	5 2	4 6	4 5	4 6	4 5	4 8	4 3
21.					5 10	5 2	4 6	4 5	4 6	4 5	4 8	4 3
22.					5 9	5 1	4 6	4 4	4 7	4 5	4 9	4 3
23.					5 8	5 0	4 6	4 4	4 6	4 5	4 10	4 3
24.					5 7	5 0	4 5	4 4	4 6	4 5	5 1	4 3
25.					5 9	4 11	4 6	4 4	4 5	4 5	4 9	4 3
26.					5 6	4 11	4 6	4 4	4 5	4 7	4 7	4 3
27.					5 4	4 11	4 4	4 5	4 8	4 8	4 5	4 3
28.					5 3	4 11	4 5	4 5	4 6	4 10	4 6	4 3
29.					5 5	4 11	4 5	4 5	4 7	4 10	4 5	4 3
30.					5 3	4 10	4 5	4 5	4 7	4 9	4 5	4 3
31.					5 3		4 6	4 5		4 9		

1875.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioners' report for 1877-78.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>	<i>Ft.in.</i>
1.	4 4				5 7	6 1	4 9	9 4	5 7	5 4	7 10	
2.	4 4				5 8	5 10	4 10	11 1	5 8	5 4	7 7	
3.	4 4				5 7	5 10	4 11	13 1	5 6	5 4	7 8	
4.	4 4				5 8	5 10	4 10	14 1	5 4	5 3	7 0	
5.	4 4				5 8	5 9	5 9	14 3	5 3	5 3	6 11	
6.	4 4				5 9	5 8	4 11	14 2	5 2	5 9	6 7	
7.	4 4				5 8	5 8	4 10	14 0	5 1	6 10	6 6	
8.	4 4				5 8	5 7	4 10	13 7	5 6	8 2	6 5	
9.	4 4				5 9	5 6	4 11	12 11	5 8	8 6	6 3	
10.	4 4				5 8	5 6	4 10	12 3	6 7	8 0	6 0	
11.	4 4				5 8	5 6	4 9	12 0	8 4	7 9	5 11	
12.	4 4				5 10	5 5	4 9	13 6	8 1	7 2	5 11	
13.	4 3				5 10	5 5	4 9	14 1	8 5	6 11	5 8	
14.	4 3				6 0	5 7	4 9	12 8	8 2	6 11	5 9	
15.	4 3				6 1	5 9	4 9	11 4	8 0	6 5	5 10	
16.	4 3				6 1	5 9	4 9	11 2	7 6	6 4	5 11	
17.	4 3				6 0	5 8	4 10	10 9	7 3	6 2	6 0	
18.	4 3				5 11	5 6	6 5	10 2	7 2	6 0	5 11	
19.	4 3				5 11	5 4	7 5	9 9	7 1	6 0	5 10	
20.	4 3				5 10	5 1	7 11	8 10	6 11	5 11	5 8	
21.	4 3			7 4	5 9	5 1	7 9	8 4	6 8	5 10	5 7	
22.	4 3			6 11	5 10	5 0	7 6	8 1	6 6	5 9	5 7	
23.	4 3			6 7	5 10	5 0	7 4	7 11	6 5	5 8	5 6	
24.	4 3			6 5	5 10	5 0	6 9	7 7	3 11	5 5	5 5	
25.	4 3			6 2	5 10	5 0	6 9	7 5	5 9	5 4	5 4	
26.	4 3			6 0	5 10	4 11	6 8	7 1	5 6	5 5	5 8	
27.	4 3			5 9	5 9	4 11	6 5	6 9	5 5	5 4	5 8	
28.	4 3			5 8	5 9	4 11	7 9	6 4	5 4	5 4	5 7	
29.	4 3			5 8	5 9	4 11	8 5	6 2	5 5	7 0	5 7	
30.	4 3			5 7	6 1	4 9	9 0	5 9	5 4	7 8	5 5	
31.	4 3				6 1		9 2	5 9		7 9		

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1876.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioner report for 1877-78.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1				15 11	9 2	7 11	13 2	6 3	5 0	5 8	5 1	.....
2				16 11	8 11	7 7	12 7	6 1	4 11	5 8	5 5	.....
3				16 11	8 11	7 3	12 1	5 10	4 10	5 8	5 9	.....
4					8 4	7 0	12 7	5 11	4 10	5 8	5 11	.....
5					8 7	6 9	13 1	6 0	4 10	5 7	6 2	.....
6					8 1	6 10	13 6	5 10	4 11	5 4	6 2	.....
7					9 6	6 9	13 1	5 9	5 0	5 2	6 2	.....
8					11 5	6 5	13 1	5 8	5 2	5 1	6 2	.....
9					11 11	6 5	12 1	5 7	5 5	5 1	6 4	.....
10					11 9	6 5	12 2	5 7	5 7	5 1	6 4	.....
11				16 1	11 6	7 1	11 11	5 7	6 1	5 1	6 3	.....
12				15 3	11 1	7 6	11 7	5 8	6 5	5 0	6 1	.....
13				15 10	10 11	7 11	11 5	5 9	6 8	5 0	6 1	.....
14					10 7	13 2	11 5	5 10	6 9	5 1	6 1	.....
15					9 11	16 9	11 6	5 11	6 9	5 1	6 2	.....
16					9 5	16 5	11 1	6 1	6 9	5 1	6 3	.....
17				16 1	8 11	17 6	10 10	6 0	6 9	5 1	6 3	.....
18				14 11	8 10	18 6	10 7	5 10	6 8	5 1	6 3	.....
19				14 3	9 10	17 4	10 4	5 9	6 6	5 1	6 3	.....
20				13 7	10 7	15 7	9 11	5 9	6 6	5 1	6 3	.....
21				13 4	11 7	14 7	9 8	6 1	6 6	5 1	.....	.....
22				12 9	11 6	13 10	9 4	5 10	6 5	5 1	.....	.....
23				12 2	10 11	12 6	9 0	5 7	6 5	5 1	.....	.....
24				11 11	10 5	12 4	8 7	5 5	6 1	5 1	.....	.....
25				11 7	10 0	11 9	8 4	5 4	6 1	5 1	.....	.....
26				16 11	9 7	11 3	7 11	5 3	6 1	5 1	.....	.....
27				10 7	9 5	12 1	7 8	5 1	6 1	5 1	.....	.....
28				10 6	9 0	13 7	7 3	5 1	6 1	5 1	.....	.....
29				10 0	8 7	14 1	6 8	5 1	6 1	5 1	.....	.....
30				9 7	8 3	13 10	6 8	5 1	5 10	5 1	.....	.....
31					8 0		6 5	5 1		5 1	.....	.....

1877.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, not given; elevation of zero, 439.24; gauge reader, not given; copied by F. B. Duis from Illinois canal commissioners report for 1877-78.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1					10 4	6 0	7 3	4 10	4 7	4 6	6 5	.....
2					10 0	5 10	6 11	4 10	4 7	4 10	6 5	.....
3					9 10	5 8	8 0	4 10	4 7	5 0	6 4	.....
4					9 9	5 7	8 0	4 10	4 7	5 0	6 6	.....
5					9 6	5 7	8 1	4 10	4 7	5 0	6 6	.....
6					9 3	5 6	8 5	4 9	4 7	5 0	6 7	.....
7					9 1	5 7	8 6	4 9	4 7	5 0	6 9	.....
8					8 11	5 8	8 5	4 8	4 7	5 0	7 1	.....
9					11 2	5 11	8 3	4 8	4 7	5 2	7 4	.....
10					11 9	5 11	7 8	4 8	4 7	5 2	7 11	.....
11				15 7	11 8	5 7	7 5	4 8	4 7	5 2	8 9	.....
12				15 4	10 10	5 7	7 1	4 8	4 7	5 1	9 0	.....
13				14 1	10 6	5 7	6 10	4 8	4 6	5 3	8 9	.....
14				13 7	10 0	5 7	6 7	4 8	4 6	5 2	8 8	.....
15				13 1	9 8	5 5	6 1	4 8	4 5	5 1	8 7	.....
16				12 10	8 11	5 3	5 8	4 8	4 6	5 1	8 6	.....
17				12 6	8 7	5 1	5 7	4 8	4 6	5 3	8 6	.....
18				12 2	8 4	5 1	5 3	4 8	4 6	5 3	8 6	.....
19				12 0	8 2	5 7	5 3	4 8	4 6	5 4	8 5	.....
20				12 2	8 1	6 7	5 3	4 8	4 6	5 9	8 4	.....
21				12 1	7 10	7 3	5 1	4 8	4 5	6 3	8 3	.....
22				11 10	7 7	8 4	5 1	4 8	4 5	6 5	8 5	.....
23				11 9	7 4	8 0	5 0	4 7	4 5	6 6	9 0	.....
24				11 9	7 1	6 1	4 10	4 7	4 6	6 8	9 5	.....
25				11 6	6 9	6 8	4 10	4 7	4 6	6 8	9 5	.....
26				10 7	6 8	7 4	4 10	4 7	4 6	6 8	9 7	.....
27				10 1	6 5	8 0	4 10	4 7	4 6	6 7	9 9	.....
28				10 0	6 1	8 1	4 10	4 7	4 6	6 7	9 10	.....
29				10 1	6 1	7 11	4 10	4 7	4 6	6 7	10 1	.....
30				10 2	6 1	7 8	4 10	4 7	4 6	6 6	10 4	.....
31					6 1		4 10	4 7		6 6	.....	.....

Gauge readings, Illinois and Des Plaines rivers, Illinois. -Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL. -Continued.

1883.

[Location of gauge, Lock 15; in charge of United States Engineer Department; time of day, 7 a. m.; elevation of zero, 463.93; gauge reader, Lewis Cook; copied by E. B. Duns from cards in United States Engineer Office at Chicago, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
1								4.8	0.8	0.9	2.9	
2								3.1	.7	1.0	2.7	
3								3.4	.65	1.2	2.5	
4								3.0	.6	1.2		
5								2.4	.6	1.2		
6								2.2	.5	1.2		
7								1.8	.4	1.2		
8								1.6	.35	1.2		
9								1.4	.25	1.2		
10								1.2	.2	1.1		
11								1.0	.2	1.1		
12								.9	.11 $\frac{1}{2}$	1.2		
13								.8	.11 $\frac{1}{2}$	1.2		
14								.9	.1	1.2		
15								1.1	.1	1.2		
16								1.1	.3	1.2		
17								1.1	.3	1.2		
18								1.1	.1	1.2		
19								1.0	.15	1.3		
20								1.0	.15	1.5		
21								.9	.4	1.5		
22								1.0	.4	1.5		
23								.9	.6	1.4		
24								.8	.8	1.3		
25								.7	.9	1.3		
26								.6	.8	1.4		
27								.6	.8	1.6		
28								.6	.8	2.1		
29								.9	.8	2.4		
30								.9	.8	2.8		
31								.9		3.0		

1893.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 465.39; gauge reader, John Corrigan; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1							11 3	8 8		11 0	11 11	
2							11 1	8 10		11 0	11 11	
3							11 0	8 10		11 0	11 11	
4							10 11	8 10		12 2	11 11	
5							10 10	8 10		12 2	11 11	
6							10 9	8 10		12 2	11 11	
7							10 8	8 10		12 2	11 11	
8							10 8	8 10		12 2	11 11	
9							10 7	8 10		12 2	11 11	
10							10 6	9 1		12 2	11 11	
11							10 5	9 2		12 1	11 11	
12							10 4	9 2		12 1	11 11	
13							10 3	9 2		12 1	11 11	
14							10 2	9 4		12 2	11 11	
15							10 1	9 6		12 2	11 11	
16							10 0	9 8		12 1	11 11	
17							9 11	9 10		12 1	11 11	
18							9 10	10 0		12 1	11 11	
19						12 8	9 9	10 2		12 1	11 11	
20						12 6	9 8	10 4		12 1		
21						12 4	9 7	10 5		12 1		
22						12 3	9 6	10 6		12 1		
23						12 2	9 5	10 6		12 0		
24						12 1	9 4	10 6		12 0		
25						12 0	9 3	10 6		11 11		
26						11 11	9 2	10 6		11 11		
27						11 9	9 1	10 5		11 11		
28						11 8	9 0	10 4		11 11		
29						11 6	8 11	10 4		11 11		
30						11 4	8 10	10 3		11 11		
31							8 9	10 3		11 11		

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1894.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, John Corrigan; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.				14 0		12 2	11 3	10 2	10 2	11 4	10 7	
2.				13 9		12 1	11 4	10 2	10 2	11 3	10 7	
3.				13 9		12 0	11 5	10 2	10 3	11 2	10 7	
4.				13 7		12 0	11 6	10 2	10 5	11 1	10 7	
5.				13 5		12 0	11 7	10 2	11 0	11 1	10 8	
6.				13 3		12 0	11 7	10 2	11 4	11 0	10 10	
7.				13 1		11 11	11 6	10 2	11 7	10 11	10 10	
8.				12 9		11 10	11 5	10 2	12 3	10 11	10 10	
9.				12 7		11 9	11 3	10 3	12 7	10 10	10 10	
10.				12 7		11 8	11 0	10 4	13 6	10 10	10 10	
11.				12 7		11 6	10 8	10 4	13 1	10 10	11 2	
12.				12 7		11 5	10 6	10 4	12 4	10 9	11 2	
13.				12 7		11 3	10 6	10 5	12 1	10 8	11 2	
14.				12 8		11 2	10 6	10 6	11 8	10 7	11 3	
15.				12 8		11 1	10 6	10 5	11 5	10 7	11 3	
16.				12 10		11 1	10 6	10 4	11 8	10 7	11 3	
17.				13 4		11 1	10 6	10 3	11 9	10 7	11 3	
18.				13 4		11 2	10 6	10 2	11 8	10 7	11 3	
19.				13 7		11 2	10 5	10 1	11 7	10 7	11 3	
20.				13 7		11 3	10 5	10 1	11 6	10 8		
21.				13 11		11 2	10 5	10 1	11 5	10 8		
22.				13 9		11 1	10 5	10 1	11 5	10 8		
23.				13 7		11 1	10 4	10 1	11 5	10 8		
24.				13 5		11 2	10 4	10 1	11 5	10 8		
25.				13 3		11 3	10 3	10 1	11 4	10 7		
26.				13 1		11 3	10 3	10 1	11 4	10 7		
27.				12 13		11 3	10 2	10 1	11 4	10 8		
28.				12 9		11 3	10 2	10 1	11 4	10 8		
29.				12 9		11 1	10 2	10 1	11 4	10 8		
30.				12 9		11 1	10 2	10 1	11 4	10 8		
31.							10 2	10 1		10 8		

1897.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.				21 0	15 6	10 1	11 10	9 9	9 6	9 5	9 6	
2.				21 0	15 6	10 0	11 7	9 9	9 6	9 5	9 6	
3.				20 11	15 5	10 0	11 4	9 8	9 7	9 5	9 8	
4.				20 10	15 4	10 0	11 1	9 7	9 7	9 5	9 8	
5.				20 9	14 11	9 11	12 6	9 6	9 7	9 7	9 10	
6.				20 8	14 7	9 9	11 9	9 6	9 6	9 7	9 9	
7.				20 6	14 4	9 8	11 3	9 6	9 6	9 6	9 9	
8.				20 4	14 0	9 7	11 1	9 6	9 6	9 6	9 9	
9.				20 1	13 7	9 7	10 10	9 6	9 5	9 5	9 10	
10.				19 10	13 3	9 7	10 7	9 6	9 6	9 5	9 10	
11.				19 7	12 11	9 7	10 5	9 6	9 5	9 5	9 10	
12.				19 4	12 8	9 6	10 5	9 6	9 5	9 5	9 10	
13.				19 1	12 7	9 6	10 4	9 6	9 5	9 5	9 10	
14.				18 10	12 4	9 7	10 3	9 6	9 5	9 5	9 10	
15.				18 6	12 1	9 10	10 3	9 6	9 6	9 6	9 10	
16.				18 3	11 9	10 0	10 2	9 4	9 7	9 6	10 1	
17.				18 0	11 5	10 6	10 2	9 4	9 6	9 6	10 1	
18.				17 9	11 5	10 10	10 2	9 4	9 6	9 6	10 1	
19.				17 6	11 5	11 4	10 10	9 5	9 6	9 6	10 1	
20.				17 3	11 5	12 10	10 9	9 5	9 5	9 6	10 1	
21.				16 9	11 3	13 8	11 2	9 5	9 5	9 6	10 2	
22.				15 0	10 10	13 7	11 2	9 5	9 5	9 6	10 1	
23.				14 7	10 9	15 5	10 10	9 5	9 4	9 6		
24.				14 7	10 9	15 10	10 7	9 6	9 4	9 6		
25.				15 0	10 9	15 2	10 4	9 6	9 5	9 6		
26.				15 6	10 8	14 8	10 3	9 6	9 5	9 6		
27.				15 6	10 7	13 11	10 2	9 6	9 5	9 6		
28.				15 7	10 6	13 5	9 11	9 6	9 5	9 6		
29.				15 7	10 4	12 10	9 11	9 6	9 5	9 6		
30.				15 5	10 3	12 2	9 10	9 6	9 5	9 6		
31.					10 2		9 10	9 6		9 6		

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1898.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.					12 10	15 8	11 11	9 7	9 9	9 8	11 10	
2.					12 9	15 4	11 7	9 7	9 8	9 8	11 6	
3.					12 5	15 0	11 3	9 7	9 8	9 9	11 2	
4.					12 0	14 5	10 11	9 7	9 8	9 10	11 2	
5.					11 11	13 10	10 5	9 7	9 8	9 11	11 3	
6.					12 1	13 5	10 0	9 7	10 5	9 11	11 4	
7.					12 2	13 1	9 11	9 7	10 6	9 11	11 0	
8.					18 9	12 3	12 11	9 8	9 7	10 5	9 10	11 0
9.					18 11	12 1	12 10	9 7	9 7	10 4	9 10	11 0
10.					17 9	11 11	13 3	9 3	9 7	10 3	9 10	11 3
11.					17 6	11 9	13 6	9 2	9 7	10 2	10 0	11 9
12.					16 11	11 7	13 8	9 1	9 7	10 1	9 11	12 10
13.					16 7	11 4	13 11	8 11	9 7	10 1	9 11	13 10
14.					16 8	11 1	13 11	9 0	9 7	10 3	9 11	14 10
15.					16 7	11 5	13 9	9 0	9 7	10 3	9 11	15 1
16.					16 5	12 4	13 4	9 4	10 8	10 2	9 11	15 1
17.					15 11	13 5	13 0	9 6	10 10	10 2	10 0	14 7
18.					15 6	13 8	12 8	9 8	10 8	10 1	10 2	14 6
19.					15 4	14 5	12 4	9 10	10 5	9 11	10 4	14 3
20.					15 1	17 0	11 19	9 10	10 3	9 10	10 5	13 11
21.					14 8	17 8	11 5	9 8	10 2	9 9	10 6	13 6
22.					14 6	18 11	11 1	9 7	10 2	10 3	10 8	13 6
23.					14 1	19 5	11 0	9 7	10 2	10 6	10 9	13 3
24.					14 0	19 0	11 1	9 7	10 2	10 5	11 2	12 7
25.					13 10	18 6	11 1	9 7	10 1	10 4	11 10	12 6
26.					13 10	17 11	12 4	9 7	10 0	10 0	12 8	
27.					13 9	17 2	12 2	9 7	9 11	9 10	12 11	
28.					13 6	17 4	12 9	9 7	9 10	9 10	12 10	
29.					13 3	16 11	12 7	9 7	9 10	9 9	12 7	
30.					12 11	16 5	12 3	9 7	9 10	9 8	12 2	
31.					16 0			9 7	9 9		11 11	

1899.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.					11 1	11 11	9 8	9 5	9 3	9 5	9 10	10 1
2.					10 10	12 2	9 9	9 5	9 3	9 5	9 10	10 0
3.					10 8	12 4	9 10	9 6	9 3	9 5	9 10	10 1
4.					10 9	12 6	9 11	9 5	9 2	9 5	9 11	10 2
5.					10 8	12 5	10 2	9 5	9 2	9 6	9 11	10 2
6.					10 6	11 11	10 3	9 5	9 2	9 6	9 11	10 2
7.					10 4	11 7	10 4	9 4	9 2	9 6	9 11	10 2
8.					10 4	11 3	10 3	9 3	9 2	9 7	9 11	10 2
9.					10 3	10 11	10 1	9 3	9 4	9 6	9 11	
10.					10 6	10 7	10 0	9 4	9 5	9 6	10 0	
11.					15 4	10 7	10 3	9 11	9 4	9 5	9 7	10 0
12.					15 3	10 7	10 3	9 11	9 4	9 4	9 8	10 1
13.					15 1	10 7	10 3	9 11	9 3	9 4	9 8	10 2
14.					15 0	10 7	10 2	9 10	9 2	9 4	9 8	10 3
15.					14 11	11 2	10 0	11 3	9 1	9 4	9 7	10 4
16.					14 9	11 10	9 11	11 6	9 1	9 4	9 7	10 3
17.					14 5	12 4	9 10	11 6	9 0	9 5	9 8	10 5
18.					14 1	12 8	9 9	11 5	9 0	9 5	9 9	10 4
19.					13 8	12 4	9 7	11 3	9 1	9 6	9 8	10 4
20.					13 3	11 11	9 6	10 11	9 3	9 7	9 8	10 1
21.					13 2	11 7	9 5	10 7	9 3	9 7	9 8	10 4
22.					12 11	11 3	9 5	10 3	9 3	9 6	9 8	10 4
23.					12 7	11 1	9 3	10 2	9 4	9 6	9 8	10 4
24.					12 7	10 11	9 1	10 0	9 5	9 6	9 8	10 4
25.					12 6	10 8	9 0	9 10	9 5	9 5	9 8	10 3
26.					12 4	10 6	8 11	9 9	9 5	9 5	9 8	10 1
27.					12 1	10 4	9 0	9 9	9 5	9 6	9 9	10 3
28.					11 11	10 3	9 4	9 8	9 4	9 6	9 11	10 3
29.					11 7	11 0	9 1	9 7	9 4	9 6	9 11	10 2
30.					11 2	11 8	9 1	9 3	9 4	9 6	9 11	10 1
31.					11 1			9 5	9 3		9 11	

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1900.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.					13 8	12 6	10 10	11 5	12 1	10 7	10 10	
2.					13 9	12 9	10 7	11 2	11 11	10 10	10 7	
3.					13 2	12 9	10 9	10 10	11 10	10 10	10 6	
4.					12 10	12 9	10 11	10 7	11 9	10 11	10 6	
5.					12 9	12 6	10 11	10 7	11 4	10 11	10 6	
6.					12 7	12 5	10 11	10 9	10 11	10 11	10 7	
7.				20 1	12 7	12 5	10 11	10 9	10 9	11 0	10 8	
8.				19 6	13 1	12 6	10 8	10 9	10 4	11 0	10 9	
9.				19 0	13 1	12 2	10 6	10 8	10 2	11 0	10 11	
10.				18 7	13 1	11 11	10 6	10 8	10 2	10 10	11 0	
11.				18 1	13 2	11 9	10 6	10 7	10 6	10 5	11 0	
12.				17 7	13 2	11 6	10 6	10 9	10 1	10 2	11 0	
13.				17 4	13 0	11 2	10 6	10 10	9 10	10 2	11 0	
14.				17 0	12 10	10 10	10 6	10 10	9 8	10 2	11 0	
15.				16 9	12 6	10 7	10 3	11 4	9 8	10 2	10 7	
16.				16 5	12 3	10 6	10 5	11 4	10 5	10 2	10 6	
17.				16 5	12 1	10 10	10 6	11 4	10 10	10 2	10 8	
18.				16 6	12 0	11 1	10 6	11 3	10 2	10 2	11 0	
19.				16 10	11 9	10 10	10 6	11 2	9 8	10 2	11 2	
20.				16 11	11 8	10 7	10 7	11 6	9 6	10 2	11 4	
21.				16 11	11 3	10 6	10 9	11 3	9 3	10 2	12 4	
22.				16 4	11 7	10 7	10 10	11 3	9 2	10 6	13 3	
23.				16 2	12 2	10 7	10 8	11 2	9 0	10 7	13 9	
24.				15 11	12 4	11 2	10 6	11 2	9 6	10 7	13 11	
25.				15 8	12 1	11 6	10 6	10 11	10 1	10 6	14 2	
26.				15 5	11 11	11 7	10 6	10 10	10 5	10 6	14 4	
27.				15 2	11 9	11 7	10 7	11 4	10 10	10 5	14 0	
28.				14 11	11 8	11 6	11 2	11 7	11 3	10 5	14 0	
29.				14 8	11 7	11 2	11 8	11 11	10 8	10 8	13 11	
30.				13 9	11 7	11 2	11 11	12 3	10 4	10 8	13 10	
31.					11 11		11 9	12 3		10 8		

1901.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.					13 5	10 7	10 7	10 6	10 5	10 6	10 8	
2.					13 3	10 8	11 0	10 6	10 5	10 6	10 8	
3.					12 11	10 7	10 10	10 5	10 5	10 6	10 8	
4.					12 9	10 6	10 8	10 4	10 5	10 5	10 8	
5.					12 7	10 6	10 8	10 3	10 5	10 4	10 7	
6.				20 4	12 6	10 8	10 8	10 3	10 5	10 2	10 7	
7.				20 1	12 6	10 8	10 8	10 3	10 5	10 3	10 7	
8.				19 7	12 5	10 8	10 11	10 3	10 4	10 5	10 7	
9.				19 3	12 3	10 7	10 10	10 4	10 4	10 7	10 7	
10.				18 10	12 1	10 7	10 8	10 5	10 4	10 6	10 7	
11.				18 5	12 2	10 8	10 5	10 4	10 4	10 6	10 7	
12.				18 1	12 1	10 8	10 4	10 4	10 8	10 6	10 8	
13.				17 8	12 0	10 7	10 4	10 4	10 8	10 6	10 8	
14.				17 5	11 8	10 7	10 3	10 4	10 8	10 7	10 8	
15.				17 1	11 7	10 6	10 2	10 4	10 8	10 7	10 7	
16.				16 9	11 6	10 6	10 2	10 4	10 9	10 7	10 7	
17.				16 7	11 4	10 6	10 2	10 4	10 8	10 7	10 6	
18.				16 4	11 4	10 6	10 0	10 4	10 7	10 7	10 6	
19.				16 1	11 3	10 6	10 0	10 6	10 7	10 7	10 6	
20.				15 11	11 2	10 5	9 11	10 5	10 7	10 7	10 6	
21.				15 6	10 11	10 6	9 11	10 5	10 7	10 8		
22.				15 2	11 2	10 5	9 11	10 5	10 7	10 8		
23.				15 0	11 1	10 5	9 11	10 6	10 7	10 8		
24.				14 10	11 0	10 5	9 11	10 5	10 7	10 7		
25.				14 7	10 11	10 5	10 1	10 5	10 7	10 7		
26.				14 4	10 10	10 5	10 1	10 5	10 7	10 8		
27.				14 2	10 9	10 5	10 2	10 5	10 6	10 8		
28.				14 1	10 9	10 5	10 3	10 5	10 6	10 8		
29.				13 10	10 8	10 5	11 0	10 5	10 6	10 8		
30.				13 6	10 8	10 5	10 11	10 5	10 6	10 8		
31.					10 8		10 8	10 5		10 8		

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL.—Continued.

1902.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.				16 5	12 4	15 0	25 0	19 2	13 6	18 3	15 1	
2.				16 7	12 7	15 1	25 8	18 10	13 2	18 9	14 11	
3.				16 8	12 7	16 0	25 11	18 5	13 0	18 6	14 10	
4.				16 2	12 7	21 9	26 4	18 1	12 11	18 1	14 8	
5.				15 10	13 4	21 10	25 8	18 1	12 8	18 3	14 11	
6.				15 6	13 6	20 3	25 0	18 1	12 6	18 9	17 4	
7.				15 3	13 7	20 0	24 2	17 9	12 3	18 11	18 8	
8.				15 1	14 2	20 7	23 3	17 1	12 2	18 7	18 6	
9.				14 11	13 10	20 4	23 2	16 8	12 4	18 4	18 4	
10.				14 9	13 7	19 10	23 4	16 10	12 3	17 11	18 1	
11.				14 7	13 6	19 3	23 0	17 1	12 2	17 4	17 11	
12.				14 5	13 1	19 4	22 5	16 9	12 1	17 1	18 0	
13.				14 0	13 0	19 6	21 7	17 4	11 11	17 10	17 11	
14.				13 6	13 2	20 2	20 11	17 8	11 10	18 5	17 8	
15.				13 5	13 3	20 6	20 4	17 5	11 9	18 4	17 5	
16.				13 2	13 2	20 5	20 4	17 1	11 7	17 11	17 3	
17.				13 1	13 0	20 5	20 4	16 9	11 5	17 8	17 2	
18.				12 11	13 0	20 1	21 8	16 7	11 8	17 5	17 4	
19.				12 7	13 0	19 9	26 5	16 7	11 9	17 3	17 3	
20.				12 4	12 11	19 3	26 11	16 9	11 10	17 2	17 2	
21.				12 4	12 9	18 10	26 2	16 6	11 10	17 0		
22.				12 3	13 3	18 6	25 3	16 2	11 9	16 10		
23.				12 2	13 11	18 0	24 4	15 11	11 8	16 9		
24.				12 1	14 10	17 8	23 5	15 5	13 7	16 8		
25.				12 0	16 8	17 3	22 7	15 0	15 3	16 4		
26.				12 4	18 3	16 9	21 9	14 8	16 0	16 2		
27.				12 10	18 1	16 6	21 1	14 5	16 5	16 0		
28.				12 11	17 4	17 6	20 6	14 3	16 6	15 8		
29.				12 9	16 6	19 8	20 2	14 1	16 6	15 6		
30.				12 6	15 9	22 9	19 11	13 10	17 3	15 4		
31.					15 2		19 5	13 8		15 1		

1903.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, noon; elevation of zero, 435.36; gauge reader, James Ross; copied by O. W. Boers from records in Illinois canal commissioners' office at Lockport, Ill., for May, June, July, and August, and from weekly gauge reports filed at United States engineer office, Peoria, Ill., for November and December. Readings for November and December were taken at 7 a. m., and were copied by R. L. Hauser.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1.					18 3	14 9	12 6	12 2			13 2	13 8
2.					18 0	15 2	12 5	12 1			13 2	13 4
3.					17 8	15 5	12 5	12 1			13 1	13 6
4.					17 5	15 6	12 4	12 1			12 11	13 6
5.					17 2	15 10	12 3	12 2			12 10	13 0
6.					16 10	16 6	12 1	12 4			12 8	12 11
7.					16 6	16 11	11 10	12 5			12 8	13 6
8.					16 2	16 11	11 9	12 6			12 8	13 8
9.					15 11	16 8	11 9	12 5			12 8	13 8
10.					15 8	16 5	11 9	12 5			12 7	13 7
11.					15 5	16 2	12 1	12 4			12 7	13 3
12.					15 2	15 10	12 3	12 3			12 8	12 11
13.					15 0	15 7	12 2	12 1			12 7	12 10
14.					14 10	15 4	12 1	12 1			12 7	12 4
15.					14 8	14 10	11 11	12 0			12 5	12 8
16.					14 5	14 5	11 10	12 3			12 2	13 3
17.					14 2	14 2	11 10	12 3			12 4	13 4
18.					14 0	14 0	12 9	12 1			12 4	13 4
19.					14 0	13 8	13 4	12 0			12 2	13 0
20.					13 11	13 10	13 4	12 0			12 1	13 3
21.					13 9	13 9	13 0	12 0			12 1	13 9
22.					13 10	13 7	12 7	11 11			12 2	14 2
23.					13 11	13 7	12 5	11 10			12 8	14 4
24.					13 11	13 6	12 2	11 10			12 9	14 6
25.					13 11	13 5	12 1	11 10			12 9	14 7
26.					13 11	13 2	11 11	11 9			12 2	14 6
27.					14 1	12 11	11 10	12 1			12 3	14 2
28.					14 2	12 9	11 10	12 6			12 5	14 2
29.					14 2	12 8	11 10	12 10			12 4	14 2
30.					14 3	12 7	12 0	13 1			12 1	14 0
31.					14 6		12 1	13 0				13 11

Gauge readings, Illinois and Des Plaines rivers, Illinois—Continued.

ILLINOIS AND MICHIGAN CANAL, LASALLE, ILL. Continued

1904.

[Location of gauge, Lock 15; in charge of Illinois canal commissioners; time of day, 7 a. m.; elevation of zero, 435.36; gauge, reader, James Ross; copied by R. L. Hauser from weekly gauge reports filed at United States engineer office, Peoria, Ill.]

Day	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
	13 10 $\frac{1}{2}$	18 11 $\frac{1}{2}$	21 6	27 1	19 11	14 10	11 3	11 10	11 5	13 4	11 7	11 2
	14 0	18 7	23 0	27 4	19 4	14 10	11 4	11 10	11 6	13 1	11 5	11 2
	14 0	18 2	24 6	27 0	18 11	14 8	11 4	11 9	11 7	12 11	11 4	11 2
4	13 11 $\frac{1}{2}$	17 10	24 10	26 6	18 7	15 2	11 6	11 7	11 6	12 8	11 4	11 1
5	13 11	17 9	24 5	26 0	18 2	15 5	11 3	11 7	11 4	12 8	11 4	11 1
6	13 10	18 2	23 11	25 6	17 10	15 2	11 3	11 6	11 4	12 5	11 4	11 2
7	13 10 $\frac{1}{2}$	20 5	23 9	24 10	17 7	14 10	11 5	11 4	11 3	12 3	11 3	11 2
8	13 11	22 5	24 5	24 4	17 5	14 6	11 7	11 3	11 2	12 1	11 3	11 2
9	13 10	22 8	25 8	24 2	17 4	14 2	11 7	11 3	11 2	12 0	11 3	11 2
10	13 10	22 1	25 6	24 0	17 4	13 11	11 9	11 3	11 2	12 0	11 3	11 2
11	13 10 $\frac{1}{2}$	21 9	24 10	23 10	17 2	13 7	11 11	11 3	11 1	11 11	11 3	11 1
12	14 1	21 4 $\frac{1}{2}$	24 7	23 4	17 2	13 4 $\frac{1}{2}$	12 2	11 3	11 0	11 11	11 3	11 1
13	14 1	20 11	23 11	22 10	17 0	13 1	12 3	11 2	11 0	11 10	11 3	11 2
14	13 10	20 5	23 5	22 5	17 0	12 11	12 2	11 2	11 0	11 9	11 3	11 2
15	13 5	19 11	23 0	22 0	16 6	12 7	12 2	11 2	11 0	11 9	11 3	11 1
16	13 5 $\frac{1}{2}$	19 3	22 8	21 7	16 4	12 5	12 2	11 1 $\frac{1}{2}$	11 0	11 9	11 4	11 1
17	13 6	18 11	22 5	21 2	16 2	12 4	12 0	11 1	11 0	11 10	11 5	11 0
18	13 6	18 8	22 2 $\frac{1}{2}$	20 9	15 11	12 2	11 10	11 1	11 0	11 11	11 6	11 0
19	13 6	18 3	21 11	20 3	15 10	12 1	11 8	11 1	11 5	11 10	11 6	11 0
20	14 2	18 0	24 4	19 10	15 8	12 0	11 5	11 5	11 7	11 10	11 6	11 0
21	17 11	17 10	25 2	19 4	15 5	11 11	11 5 $\frac{1}{2}$	11 7	11 5	11 10	11 6	11 1
22	21 9	17 8	26 0	19 11	15 4	11 10	11 5	11 10	11 4	11 9	11 6	11 1
23	23 1	17 5	27 2	18 7	15 3 $\frac{1}{2}$	11 8	11 5	12 1	11 3	11 7	11 6	11 1
24	23 2	17 2 $\frac{1}{2}$	26 11	19 2	15 2	11 8	11 5	12 1	11 3	11 7	11 6	11 2
25	22 0	17 1	27 4	19 3	14 11	11 6	11 4	12 1	11 3	11 6	11 5	11 3
26	21 6 $\frac{1}{2}$	17 0	29 0	19 9	14 10	11 5	11 2 $\frac{1}{2}$	11 11	11 7	11 6	11 5	11 4
27	21 3	16 11	29 2	20 5	14 9	11 2	11 2	11 9	12 0	11 6	11 5	11 6
28	20 8	16 11	28 9	20 8	14 6	11 2	11 4	11 8	12 1	11 6	11 4	11 8
29	20 5 $\frac{1}{2}$	17 8	28 1 $\frac{1}{2}$	20 7	14 4	11 2	11 5	11 7	12 9	11 6	11 3	11 11
30	19 7	.....	27 6	20 3	14 4	11 3	11 6	11 6	13 5	11 3	11 2	12 5
31	19 3	.....	27 3	.....	14 5	.....	11 8	11 4	.....	11 2	.....	12 6

2678 W. I. HARRIS, called as a witness by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is W. I. Harris. I reside at Ottawa, Illinois. I am in the real estate and insurance business. I have been connected for some years with an observation station of the United States signal office at Ottawa. I have
2679 been connected with that station fifteen years or more. When I was first connected with that station my father was the observer. His name is Dr. J. L. Harris. He is dead. The present observer is my sister, Maude M. Harris. She is living. I have been assistant in these observations all the time. This office is in the signal service of the United States, making regular daily reports. I have with me the records of the office showing the rainfall for the City of Ottawa, La Salle County. We have had a continuous record, I think, since the organ-
2680 ization of the bureau. I couldn't give you the exact date. It has been operating over fifteen years, I think. I have the record, yes, sir, but they are not entirely complete. Whatever they are, I have them. They begin in the year 1904. I have also records prior to that time. The records begin with 1887. This is a copy of the record. The record comes from the office of the observer. It remains on file there now. These are copies of the observations that remain on file in the office of
2681 the United States Signal Observer.

Mr. CHIPPERFIELD: You may commence and give all the precipitations.

Mr. O'CONOR: I would like to ask a few questions as to how the records are made.

The WITNESS: The records are made daily.

I live here in Ottawa. My office is on the southwest

2682 corner of La Salle and Main streets. The observations are made at the house. The precipitations were invariably made at the house. I think they started originally in the morning, but of late years they have been made in the evening about 6:30. I spend most of the time in the office. I didn't actually make all of them. I made a number of them. I made them just as occasion required. Yes, my father was the regular observer, but frequently required me to assist him in making those records, and I have done so whenever occasion required

2683 in that way. I have an instrument at home. It consists of a funnel shaped tube with a funnel graduated to the size of the cylinder, also an inner cylinder in which the actual rainfall is deposited; the outer cylinder being merely to collect the rain which is afterwards run to the inner cylinder and measured from that. If there was a rainfall the night before it will be shown on the instrument, the amount would show. I don't think a heavy dew would show. I think these figures are invariably correct. I was not there at all times when they were

2684 made. These records do not appear in my handwriting. I could not say what portion of them appear in my handwriting, because I made them, as I said before, whenever occasion required, and it would be almost impossible for me to say what portion of them were made by me. The instrument is kept in a clear space on our premises at home, and I should say between sixty or seventy feet from the house, and probably not over thirty feet from any other building. The government requires it to be kept in a clear space. It is about two feet and a half, possibly more or less, up from the ground. I have an elder sister who has sometimes made

2685 these records, but very seldom. The book does not show notations made by myself, and notations, if any, made by others. That book is not in typewriting. The

copies I have here are printed. This is not the original, it is a copy. I could not tell from looking at the book how much of it I actually made myself and how much of it was made by some one else, but all of it was either made by myself or some member of my family.

2686 A. For February the precipitation for the month was 3.25.

	Inches.	(In Red Pencil.)
For January,	2.81	1.82
For February,	5.17	3.25
For March,	1.	0.64
For April,	.62	0.39
For May,	1.69	1.08
For June,	1.96	1.12
For July,	1.17	
For August,	3.06	
For September,	2.77	
For October,	2.80	
For November,	2.17	
For December,	3.33	

Mr. CHIPERFIELD: Q. Have you got the total precipitation per years?

A. The total precipitation for the year is 23.60.

Q. You may proceed with the next one, for the next year. A. For 1888 the precipitation:

For January,	1.80	For July,	3.58
For February,	1.88	For August,	1.77
For March,	3.70	For September,	0.60
For April,	1.23	For October,	2.71
For May,	5.39	For November,	3.38
For June,	2.01	For December,	2.22

Total for the year, 31.27. The following year—

Q. The next year, if you please, in like manner. A. 1889 the precipitation was:

For January,	1.91	For July,	5.67
For February,	1.16	For August,	2.00
For March,	1.77	For September,	3.92
For April,	2.44	For October,	1.51
For May,	4.36	For November,	3.12
For June,	4.61	For December,	1.80

A total of 34.27. For the year 1890—

Mr. O'CONOR: Pardon me, will you give me that general result again, 34 what?

A. 34.27 for 1889.

Mr. O'CONOR: All right.

A. For 1890:

For January,	1.94	For July,	.34
For February,	1.40	For August,	2.72
For March,	3.33	For September,	2.48
For April,	1.87	For October,	3.89
For May,	3.99	For November,	2.06
For June	6.87	For December,	.27

A total for the year of 31.16. 1891:

For January,	2.86
For February,	1.25
For March,	5.30

In April there is some slight trace, but was not enough to measure; there was some precipitation.

For May,	None
For June,	Nothing
For July,	Nothing
For August,	Nothing

Oh, I beg your pardon, I am on the wrong column. May I correct that, please?

Mr. CHIPERFIELD: Yes, certainly.

2688 A. Commencing with March the precipitation was—I see I have that wrong, I will have to correct that.

Q. You better start in again at the first of the year.

A. Starting again:

1891.		1892.	
For January,	2.86	For January,	1.45
For February,	2.28	For February,	1.52
For March,	2.56	For March,	2.70
For April,	3.96	For April,	3.56
For May,	1.84	For May,	13.25
For June,	3.99	For June,	9.80
For July,	4.45	For July,	4.92
For August,	5.11	For August,	.81
For September,	1.27	For September,	2.56
For October,	.56	For October,	.63
For November,	4.75	For November,	2.48
For December,	1.74	For December,	1.84
A total of 35.37.		A total of 45.52.	

Mr. O'CONOR: 43 what?

Mr. CHIPERFIELD: 46.

A. 46.12.

Mr. CHIPERFIELD: That was the flood year.

Mr. O'CONOR: Thank you.

A. In 1893:

2689	1893.	1894.	
For January,	2.20	For January,	2.38
For February,	3.03	For February,	1.58
For March,	3.30	For March,	2.57
For April,	5.23	For April,	1.51
For May,	1.95	For May,	4.01
For June	2.49	For June,	3.03
For July,	1.02	For July,	.80
For August,	.77	For August,	1.75
For September,	2.29	For September,	7.18
For October,	1.10	For October,	1.63
For November,	2.18	For November,	2.09
For December,	2.16	For December,	1.19
A total of 27.72.		A total of 29.72.	

Mr. BUTTERS: Twenty-five what?

Mr. CHIPERFIELD: Twenty-nine.

A. 29.70.

2690	For 1895.		1896.	
	January,	1.22	January,	1.37
	February,	.70	February,	1.65
	March,	.82	March,	1.32
	April,	2.02	April,	3.38
	May,	1.06	May,	4.24
	June,	1.02	June,	2.22
	July,	4.79	July,	8.63
	August,	2.26	August,	2.43
	September,	1.47	September,	9.38
	October,	1.16	October,	.17
	November,	5.27	November,	3.43
	December,	5.77	December,	.28
	A total of 27.56.		A total of 38.50.	
	1897.		1898.	
	January,	5.98	January,	5.24
	February,	1.71	February,	2.38
	March,	4.47	March,	5.21
	April,	1.88	April,	3.12
	May,	.99	May,	6.72
	June,	6.90	June,	5.80
	July,	2.99	July,	1.30
	August,	.74	August,	4.31
	September,	1.89	September,	5.90
	October,	.46	October,	4.73
	November,	4.37	November,	2.88
	December,	1.74	December,	1.42
	A total of 34.12.		A total of 49.01.	
2691	1899.		1900.	
	January,	.63	January,	1.60
	February,	2.10	February,	4.53
	March,	3.21	March,	2.91
	April,	1.50	April,	1.53
	May,	5.08	May,	5.60
	June,	1.42	June,	1.96
	July,	5.70	July,	4.53
	August,	3.02	August,	7.24
	September,	2.15	September,	2.26
	October,	2.53	October,	2.24
	November,	1.46	November,	3.15
	December,	2.03	December,	.31
	A total of 30.83.		A total of 37.87.	

1901.

January,	1.76
February,	2.10
March,	3.51
April,	.61
May,	2.15
June,	2.67
July,	5.47
August,	.81
September,	3.20
October,	.91
November,	1.49
December,	2.09

A total of 26.77.

1902.

January,	.63
February,	1.41
March,	4.89
April,	2.55
May,	5.64
June,	10.51
July,	10.49
August,	4.40
September,	6.76
October,	1.87
November,	4.29
December,	2.01

A total of 55.45.

2692 Mr. CHIPERFIELD: Q. How much?

A. 55.44 that is, 1902.

1903.

January,	1.13
February,	2.35
March,	3.10
April,	5.08
May,	4.19
June,	3.78
July,	1.94
August,	4.90
September,	6.03
October,	1.43
November,	.46
December,	1.91

A total of 36.30.

1904.

January,	2.54
February,	1.80
March,	4.87
April,	3.93
May,	3.00
June,	1.89
July,	5.14
August,	3.58
September,	3.27
October,	.26
November,	.08
December,	1.86

A total of 32.22.

That was as far as the record goes in this book.

Mr. CHIPERFIELD: Q. Now you have it in other tabular form? A. Yes, sir.

Q. Let us ask you a question that occurs to my mind. Are these instruments that you are speaking of furnished by the Government of the United States? A. They are, yes, sir.

Q. Are all these blanks that you are now reading from
2693 furnished in a like way?

Q. Are those totals, Mr. Harris? A. I beg pardon?

Q. Are those totals? A. Yes, these are the totals of each day.

Q. You may give them when you are ready. A. They are written in pencil there. I was just looking at the figures, for the month of January, 11.75 inches—

Q. Now, what year is this, please? A. 1905.

Q. Go ahead, please. A. For February, 12.26 inches. No, I beg pardon. It should be 1.30 for January. I had the amount of snowfall in that. The total of February, 1.93 inches. March (2.09)—I don't seem to have March here.

Q. Well, proceed with April (5.15) then. A. I don't find April. I have May.

	Inches.
May,	3.68
June,	3.39
July,	1.68
August,	4.12
September,	2.13
October,	1.87
November,	2.01
December,	1.70

Mr. BUTTERS: May I see those, please?

Mr. CHIPERFIELD: Now, take 1906, please. Have you any objection to me taking the next year and putting them in order for you?

A. I would be very glad to have you.

1906.	Inches.
January,	2.07

2694 No, 1.95. Four inches was the amount of snowfall. 1.95 was the amount of actual precipitation for the month.

February,	2.26
March,	7.02
April,	1.63

No, I beg pardon. There seems to be, the months of March and April seem to be missing.

Mr. CHIPERFIELD: Give what you have there.

A. This would be:

May,	2.37
June,	2.64
July,	1.45
August,	4.57
September,	5.09
October,	1.23
November,	2.63
December,	1.22
1907.	Inches.
January,	5.25
February,	.15

No, there seems to have been none in February, that was the amount of snowfall. No precipitation in February.

March,	2.55
April,	2.69
May,	4.84
June,	2.50
July,	6.92
August,	4.49
September,	4.94
October,	1.00
November,	1.96
December,	1.79

Q. What year is that? A. That is 1907. Now, 1908:

2696

1908.

January,	.86	July,	3.05
February,	1.53	August,	2.03
March,	3.87	September,	0.35
April,	3.48	October,	.65
May,	8.17	November,	1.79
June,	1.77	December,	.99

Q. All right, now for the year 1909, if you please. A. 1909:

1909.

January,	.98	July,	2.95
February,	3.65	August,	3.59
March,	1.64	September,	4.08
April,	5.19	October,	1.71
May,	2.57	November,	2.57
June,	3.69	December,	3.02

Q. Now, 1910, please. A. 1910:

1910.

January,	2.78	July,	.67
February,	.98	August,	3.91
March,	.52	September,	6.23
April,	3.28	October,	1.25
May,	5.28	November,	.74
June,	1.25	December,	.98

2697 Q. Now, for 1911, please. A. 1911:

1911.

January,	1.80	July,	1.60
February,	2.13	August,	6.28
March,	1.80	September,	6.88
April,	3.91	October,	2.61
May,	2.64	November,	2.28
June,	1.71	December,	2.15

Q. Now, Mr. Harris, have you got for this year, so far? A. I think so, yes, sir.

Q. Just produce that and then we will be through with this. A. 1912:

1912.

January,	.27	June,	2.09
February,	1.14	July,	2.28
March,	1.17	August,	5.58
April,	3.30	September,	2.82
May,	7.13	October,	5.24

Mr. CHIPERFIELD: That is all, Mr. Harris. They may have some questions to ask you, Mr. Harris.

Cross-Examination by Mr. O'Connor.

Q. Mr. Harris, the rainfall there is taken by months, as I understand you? A. The rainfall is taken daily.

Q. I understand, but the figures you have given here are not the daily figures.

2697 *Cross-Examination of the Witness W. I. Harris by Mr. O'Connor.*

The rainfall is taken daily. The figures I have given
2698 are the monthly figures. We might have half an inch of rain today and two or three days later have some more rain and four or five days later, or a week later, have some more rain. That is, it is spread all over the month. That shows the amount of rainfall at that given point.

Re-direct Examination of the Witness W. I. Harris by Mr. Chipperfield.

The gauge is subdivided into hundredth of an inch.

2699 S. P. PETERSON, called as a witness by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is S. P. Peterson. I reside at La Salle, Illinois. I am an observer in the United States Weather Bureau. I am a regular observer. That station is located in La Salle, Illinois. I make weather observations for the United States Government.

I have all the records with me here. They are the records of my office. The precipitation data begins in November, 1904, from the beginning of the month. That record is kept by days and months. I am able to give
2700 the daily precipitation as well as the monthly total. I

also keep in my office a record of the river gauge. That gauge is kept, as shown by my records, from May 20, 1905, up to date. The United States weather observer makes these observations. I have been there for about a year and a half. During the time I have been there I have made these observations. The book is the original record and it is in my charge and custody, as being the person in charge of the station.

2701 In 1904, November the total amount was 0.03 of an inch. December, the total amount, 1.65 inches.

1905.			
January,	.90	July,	1.49
February,	1.09	August,	3.19
March,	1.83	September,	3.15
April,	3.71	October,	1.86
May,	5.51	November,	1.93
June,	4.43	December,	1.28

Q. Give the total for the year, if you please. A. The total for the year is 30.37 inches.

Q. Now you may proceed in like manner for the next year. A.:

2702	1906.		1907.	
	January,	2.15	January,	4.46
	February,	2.01	February,	.09
	March,	2.08	March,	2.03
	April,	1.16	April,	2.36
	May,	1.85	May,	3.39
	June,	3.00	June,	3.45
	July,	2.62	July,	5.94
	August,	7.25	August,	4.29
	September,	4.89	September,	4.99
	October,	1.12	October,	.87
	November,	1.98	November,	1.55
	December,	2.14	December,	1.56
	Annual	32.25	Annual,	34.98

Mr. BUTTERS: Q. What was that total? A. The total of 1907?

Q. Yes. A. 34.98.

1908.		1909.	
January,	.96	January,	1.28
February,	2.76	February,	3.06
March,	3.07	March,	1.40
April,	2.89	April,	5.93
May,	6.69	May,	3.05
June,	2.68	June,	2.33
July,	3.72	July,	2.52
August,	1.82	August,	4.00
September,	1.09	September,	3.15
October,	.41	October,	1.53
November,	1.62	November,	3.82
December,	.83	December,	3.64
Annual	28.54	Total,	35.71

2703 Mr. CHIPERFIELD: Now, you may proceed, if you please, and give the river gauges from the time you have them until the present time. I believe you said 1905.

A. The elevation of the zero is 434.3. That is referred to Memphis datum. The observation is taken at seven o'clock every morning.

1910.		1911.	
January,	1.93	January,	1.78
February,	1.17	February,	2.16
March,	.19	March,	1.31
April,	3.78	April,	3.37
May,	6.02	May,	1.97
June,	.89	June,	3.32
July,	.79	July,	3.16
August,	3.74	August,	6.45
September,	5.09	September,	7.42
October,	1.03	October,	2.40
November,	.77	November,	2.26
December,	1.11	December,	2.04
Annual,	26.51	Annual,	37.64

1912.			
January,	1.03	June,	2.77
February,	.73	July,	2.40
March,	1.47	August,	4.35
April,	2.98	September,	2.54
May,	3.73	October,	4.62

2704	May, 1905.	June, 1905.	July, 1905.
23,	19.9	1,	14.2
24,	19.4	2,	13.9
25,	19.0	3,	13.8
26,	18.6	4,	13.7
27,	18.5	5,	13.7
28,	18.4	6,	13.5
29,	18.1	7,	13.3
30,	18.1	8,	13.2
31,	18.2	9,	13.1
		10,	13.1
		11,	13.1
		12,	13.1
		13,	13.2
		14,	13.1
		15,	13.0
		16,	12.9
		17,	12.8
		18,	12.7
		19,	12.5
		20,	12.3
		21,	12.1
		22,	12.0
		23,	11.8
		24,	11.9
		25,	11.8
		26,	11.7
		27,	11.7
		28,	11.7
		29,	11.8
		30,	11.9
2705		31,	11.9

2707	August, 1905.	September, 1905.	October, 1905.
	1, 12.0	1, 11.8	1, 11.8
	2, 12.0	2, 12.2	2, 11.8
	3, 12.0	3, 14.1	3, 11.7
	4, 11.9	4, 14.7	4, 11.5
	5, 11.9	5, 14.5	5, 11.5
	6, 11.8	6, 14.4	6, 11.5
	7, 11.7	7, 14.3	7, 11.4
	8, 11.7	8, 13.9	8, 11.4
	9, 11.6	9, 13.6	9, 11.4
	10, 11.6	10, 13.4	10, 11.5
	11, 11.5	11, 13.4	11, 11.5
	12, 11.5	12, 13.2	12, 11.4
	13, 11.6	13, 13.0	13, 11.4
	14, 11.8	14, 13.0	14, 11.3
	15, 11.9	15, 13.1	15, 11.4
	16, 11.9	16, 13.0	16, 11.5
	17, 11.9	17, 12.8	17, 11.5
	18, 11.9	18, 12.8	18, 11.5
	19, 11.9	19, 12.7	19, 11.6
	20, 11.9	20, 12.6	20, 11.9
	21, 11.8	21, 12.5	21, 12.0
	22, 11.9	22, 12.4	22, 12.1
	23, 11.9	23, 12.3	23, 12.0
	24, 11.9	24, 12.2	24, 12.1
	25, 11.9	25, 12.1	25, 12.1
	26, 11.9	26, 12.1	26, 12.2
	27, 11.9	27, 12.0	27, 12.2
	28, 11.8	28, 12.0	28, 12.1
	29, 11.8	29, 11.9	29, 11.7
	30, 11.8	30, 11.8	30, 11.9
	31, 11.8		31, 12.0

	November, 1905.	December, 1905.	
2709	1, 11.8	1, 12.0	
	2, 11.5	2, 12.0	
	3, 11.5	3, 12.4	
	4, 11.4	4, 12.6	
	5, 11.3	5, 13.7	
	6, 11.7	6,* 13.6	
	7, 12.0	7, 12.8	
	8, 12.1	8, 12.2	
	9, 12.1	9, 12.2	
	10, 12.0	10, 12.2	
	11, 11.9	11, 11.9	
	12, 11.8	12, 12.1	
	13, 11.7	13, 12.0	
	14, 11.7	14, 12.1	
	15, 11.8	15, 12.2	
	16, 11.8	16, 12.0	
	17, 11.3	17, 12.6	
	18, 11.2	18, 12.9	
	19, 11.1	19, 12.4	
	20, 11.2	20, 12.1	
	21, 11.2	21, 12.0	
	22, 11.2	22, 12.3	
	23, 11.1	23, 12.1	
	24, 11.5	24, 11.9	
	25, 11.1	25, 11.7	
	26, 11.1	26, 12.4	
	27, 11.1	27, 13.2	
	28, 11.5	28, 13.4	
	29, 12.1	29, 13.1	
	30, 12.1	30, 12.7	
		31, 12.3	

2710 —————

*The river on that same date rose about that—the water between the readings on the 5th and 6th, the regular readings, rose to 14.4 feet at some time. The time wasn't obtained.

Mr. CHIPERFIELD: Q. That ends the year, doesn't it?

A. That ends the year, yes, sir.

2711	January, 1906.	February, 1906.	March, 1906.
	1, 12.9	1, 19.1	1, 19.4
	2, 13.3	2, 18.6	2, 19.1
	3, 13.2	3, 17.8	3, 19.5
	4, 13.9	4, 18.7	4, 20.3
	5, 13.6	5, 19.0	5, 20.4
	6, 13.3	6, 19.4	6, 20.4
	7, 16.0	7, 19.0	7, 20.1
	8, 16.0	8, 18.8	8, 19.9
	9, 15.2	9, 18.6	9, 19.9
	10, 15.2	10, 18.4	10, 20.
	11, 16.0	11, 17.7	11, 19.9
	12, 16.4	12, 17.5	12, 19.6
	13, 16.5	13, 17.8	13, 19.0
	14, 16.1	14, 18.8	14, 18.8
	15, 16.2	15, 19.0	15, 18.3
	16, 16.3	16, 17.8	16, 18.1
	17, 15.5	17, 17.4	17, 18.1
	18, 15.4	18, 17.4	18, 18.8
	19, 15.5	19, 17.5	19, 19.0
	20, 15.8	20, 17.3	20, 18.5
	21, 17.1	21, 18.4	21, 18.2
	22, 16.6	22,* 19.9	22, 17.5
	23, 18.2	23, 18.6	23, 17.3
	24, 19.0	24, 18.4	24, 16.8
	25, 19.2	25, 20.2	25, 16.3
	26, 19.2	26, 20.9	26, 16.4
	27, 19.0	27, 20.3	27, 18.9
	28, 19.0	28, 19.8	28, 20.2
	29, 18.7		29, 20.5
	30, 18.8		30, 20.1
	31, 19.4		31, 20.

2712 _____

*Then there is a note saying "Some time between yesterday and today stage of 20.1 was reached."

2713

April, 1906.		May, 1906.		June, 1906.	
1,	19.7	1,	15.3	1,	12.6
2,	19.3	2,	15.2	2,	12.5
3,	19.0	3,	15.2	3,	12.4
4,	18.7	4,	15.1	4,	12.3
5,	18.5	5,	14.9	5,	12.3
6,	18.3	6,	14.7	6,	12.2
7,	18.2	7,	14.5	7,	12.3
8,	18.1	8,	14.4	8,	12.2
9,	18.3	9,	14.2	9,	12.2
10,	19.2	10,	14.1	10,	12.4
11,	19.7	11,	13.9	11,	12.6
12,	19.7	12,	13.8	12,	12.6
13,	19.6	13,	13.8	13,	12.5
14,	19.4	14,	13.6	14,	12.3
15,	19.1	15,	13.5	15,	12.3
16,	18.8	16,	13.4	16,	12.2
17,	18.6	17,	13.3	17,	12.1
18,	18.4	18,	13.2	18,	12.0
19,	18.1	19,	13.1	19,	11.9
20,	17.9	20,	12.9	20,	12.0
21,	17.5	21,	12.7	21,	12.0
22,	17.2	22,	12.6	22,	12.0
23,	17.0	23,	12.6	23,	12.0
24,	16.8	24,	12.5	24,	11.9
25,	16.6	25,	12.7	25,	11.8
26,	16.4	26,	12.7	26,	11.7
27,	16.1	27,	12.7	27,	11.3
28,	15.8	28,	12.7	28,	11.2
29,	15.6	29,	12.7	29,	11.1
30,	15.5	30,	12.7	30,	11.2
2714		31,	12.7		

2715	July, 1906.	August, 1906.	September, 1906.
	1, 11.3	1, 11.2	1, 12.3
	2, 11.2	2, 11.2	2, 12.3
	3, 11.0	3, 11.2	3, 12.3
	4, 10.9	4, 11.3	4, 12.3
	5, 10.9	5, 11.3	5, 12.3
	6, 10.7	6, 11.2	6, 12.2
	7, 10.7	7, 11.2	7, 11.9
	8, 10.7	8, 11.2	8, 11.7
	9, 10.7	9, 11.3	9, 11.6
	10, 10.6	10, 11.4	10, 11.6
	11, 10.6	11, 11.5	11, 11.5
	12, 10.7	12, 11.5	12, 11.5
	13, 10.7	13, 11.5	13, 11.5
	14, 10.7	14, 11.4	14, 11.4
	15, 10.7	15, 11.4	15, 11.3
	16, 10.6	16, 11.3	16, 11.3
	17, 10.6	17, 11.3	17, 11.2
	18, 10.6	18, 11.3	18, 11.2
	19, 10.6	19, 11.4	19, 11.2
	20, 10.7	20, 11.5	20, 11.2
	21, 10.7	21, 11.6	21, 11.5
	22, 10.8	22, 11.6	22, 11.6
	23, 10.9	23, 11.7	23, 11.6
	24, 11.0	24, 11.8	24, 11.5
	25, 10.7	25, 12.7	25, 11.4
	26, 10.7	26, 12.5	26, 11.4
	28, 10.8	27, 12.4	27, 11.4
	29, 11.1	28, 12.4	28, 11.4
	30, 11.4	29, 12.4	29, 11.6
	31, 11.2	30, 12.4	30, 12.6
2716		31, 12.4	

2717	October, 1906.	November, 1906.	December, 1906.		
1,	13.1	1,	11.9	1,	15.1
2,	13.2	2,	11.9	2,	14.8
3,	12.8	3,	11.8	3,	14.6
4,	12.6	4,	11.8	4,	14.4
5,	12.5	5,	11.8	5,	14.1
6,	12.4	6,	11.9	6,	14.8
7,	12.3	7,	11.9	7,	16.4
8,	12.2	8,	11.9	8,	17.0
9,	12.2	9,	11.9	9,	17.4
10,	12.1	10,	11.8	10,	17.4
11,	12.0	11,	11.8	11,	17.4
12,	11.8	12,	11.7	12,	17.2
13,	11.8	13,	11.8	13,	17.1
14,	11.7	14,	11.8	14,	17.0
15,	11.7	15,	11.8	15,	16.9
16,	11.7	16,	11.8	16,	16.8
17,	11.7	17,	11.9	17,	16.6
18,	11.7	18,	11.9	18,	16.6
19,	11.8	19,	11.9	19,	16.4
20,	11.8	20,	11.9	20,	16.3
21,	11.8	21,	11.9	21,	16.2
22,	11.8	22,	12.6	22,	15.9
23,	11.8	23,	14.5	23,	15.8
24,	11.8	24,	15.1	24,	16.2
25,	12.0	25,	15.5	25,	16.2
26,	12.1	26,	15.6	26,	16.5
27,	12.1	27,	15.6	27,	16.7
28,	12.0	28,	15.5	28,	16.8
29,	11.8	29,	15.3	29,	16.9
30,	11.8	30,	15.2	30,	16.8
31,	12.0			31,	16.2

2719

January, 1907.		February, 1907.		March, 1907.	
1,	16.5	1,	22.7	1,	16.9
2,	16.8	2,	22.4	2,	16.8
3,	17.1	3,	22.0	3,	17.1
4,	17.3	4,	20.5	4,	16.9
5,	17.5	5,	19.9	5,	16.8
6,	17.6	6,*	19.8	6,	16.7
7,	17.5	17,	19.3	7,	16.4
8,	18.1	18,	19.4	8,	16.3
9,	19.7	19,	19.4	9,	16.1
10,	20.1	20,	19.8	10,	15.9
11,	19.7	21,	19.9	11,	15.8
12,	19.4	22,	19.3	12,	15.8
13,	19.1	23,	18.5	13,	16.1
14,	18.8	24,	18.3	14,	17.0
15,	18.7	25,	18.2	15,	18.0
16,	18.6	26,	18.0	16,	18.4
17,	18.5	27,	17.7	17,	18.6
18,	18.4	28,	17.5	18,	18.5
19,	19.4			19,	18.3
20,	25.2			20,	18.1
21,	23.6			21,	18.0
22,	27.6			22,	17.9
23,	26.8			23,	17.7
24,	26.5			24,	17.5
25,	26.3			25,	17.3
26,	26.0			26,	17.3
27,	25.2			27,	17.2
28,	24.8			28,	17.1
29,	24.2			29,	17.9
30,	23.7			30,	19.8
31,	23.2			31,	20.4

*Then from the 7th to the 16th, inclusive, the river was frozen over so that no readings were made.

2720	April, 1907.	May, 1907.	June, 1907.
1,	20.4	1,	18.8
2,	20.2	2,	17.6
3,	20.0	3,	17.4
4,	19.6	4,	17.5
5,	19.2	5,	17.7
6,	18.9	6,	18.0
7,	18.6	7,	17.9
8,	18.6	8,	17.8
9,	18.6	9,	17.9
10,	18.5	10,	17.8
11,	18.4	11,	17.9
12,	18.0	12,	17.8
13,	17.9	13,	17.7
14,	17.8	14,	17.6
15,	17.6	15,	17.4
16,	17.5	16,	17.2
17,	17.3	17,	16.9
18,	17.0	18,	16.7
19,	16.9	19,	16.6
20,	16.7	20,	16.4
21,	16.5	21,	16.2
22,	16.3	22,	16.1
23,	16.1	23,	16.1
24,	15.9	24,	16.2
25,	15.8	25,	16.4
26,	15.7	26,	16.5
28,	15.3	27,	16.4
29,	15.3	28,	16.2
30,	15.4	29,	15.9
		30,	15.7
		31,	18.1

2722	July, 1907.	August, 1907.	September, 1907.
1,	15.5	1,	16.1
2,	15.4	2,	16.0
3,	15.2	3,	15.8
4,	15.1	4,	15.6
5,	14.8	5,	15.6
6,	14.8	6,	15.5
7,	14.8	7,	15.5
8,	15.0	8,	15.6
9,	16.6	9,	15.7
10,	17.2	10,	15.7
11,	18.4	11,	15.8
12,	19.9	12,	15.5
13,	20.4	13,	15.7
14,	19.7	14,	15.8
15,	19.3	15,	15.6
16,	19.2	16,	15.6
17,	19.0	17,	16.4
18,	19.0	18,	16.4
19,	18.7	19,	16.0
20,	18.6	20,	16.2
21,	18.3	21,	17.0
22,	18.1	22,	17.1
23,	18.1	23,	16.9
24,	18.0	24,	16.7
25,	17.8	25,	16.4
26,	17.7	26,	16.1
27,	17.4	27,	15.9
28,	17.1	28,	15.6
29,	16.9	29,	15.3
30,	16.7	30,	15.3
31,	16.4	31,	15.8

2724	October, 1907.	November, 1907.	December, 1907.
	1, 19.2	1, 13.6	1, 14.4
	2, 18.9	2, 13.7	2, 14.2
	3, 18.6	3, 13.8	3, 14.0
	4, 18.8	4, 13.9	4, 13.9
	5, 18.7	5, 14.0	5, 13.8
	6, 18.2	6, 14.2	6, 13.6
	7, 17.9	7, 14.2	7, 13.5
	8, 17.6	8, 14.1	8, 13.7
	9, 17.4	9, 14.1	9, 13.7
10,	17.0	10, 13.9	10, 13.9
11,	16.9	11, 13.8	11, 15.0
12,	16.6	12, 13.7	12, 15.7
13,	16.3	13, 13.7	13, 15.8
14,	16.0	14, 13.6	14, 15.8
15,	15.8	15, 13.5	15, 15.7
16,	15.7	16, 13.5	16, 15.6
17,	15.5	17, 13.4	17, 15.7
18,	15.4	18, 13.3	18, 15.6
19,	15.3	19, 13.3	19, 15.4
20,	15.0	20, 13.3	20, 15.3
21,	14.8	21, 13.8	21, 15.1
22,	14.7	22, 14.5	22, 15.1
23,	14.5	23, 14.6	23, 15.2
24,	14.4	24, 14.6	24, 15.5
25,	14.3	25, 14.6	25, 16.6
26,	14.1	26, 14.5	26, 17.5
27,	14.0	27, 14.6	27, 17.9
28,	13.9	28, 14.5	28, 19.0
29,	13.1	29, 14.5	29, 20.6
30,	13.8	30, 14.5	30, 21.3
31,	13.7		31, 21.5

2726	January, 1908.	February, 1908.	March, 1908.
	1, 21.4	1, 17.0	1, 22.3
	2, 21.1	2, 16.8	2, 23.0
	3, 20.8	3,* 15.6	3, 23.9
	4, 20.4	13, 20.0	4, 23.7
	5, 20.1	14, 22.1	5, 23.9
	6, 19.8	15, 23.7	6, 26.0
	7, 19.6	16, 25.2	7, 28.4
	8, 19.5	17, 24.7	8, 28.8
	9, 19.1	18, 23.7	9, 28.4
	10, 18.6	19, 23.4	10, 28.0
	11, 18.5	20, 22.6	11, 27.5
	12, 18.3	21, 21.9	12, 27.0
	13, 18.3	22, 21.4	13, 26.6
	14, 17.8	23, 21.1	14, 26.1
	15, 17.7	24, 21.3	15, 25.7
	16, 19.2	25, 21.4	16, 25.2
	17, 19.7	26, 22.9	17, 24.8
	18, 19.3	27, 23.1	18, 24.3
	19, 19.1	28, 22.8	19, 24.2
	20, 19.2	29, 22.5	20, 24.4
	21, 19.2		21, 24.4
	22, 19.4		22, 24.2
	23, 18.5		23, 23.7
	24, 18.2		24, 23.4
	25, 17.9		25, 22.7
	26, 18.0		26, 22.7
	27, 18.5		27, 21.9
	28, 17.9		28, 21.6
	29, 17.5		29, 21.7
	30, 17.0		30, 21.5
	31, 16.7		31, 21.3

2727

*Then the river was frozen from the 4th to the 12th, inclusive, and no readings were made.

2728	April, 1908.	May, 1908.
1,	21.0	1, 20.3
2,	20.9	2, 20.1
3,	20.6	3, 19.7
4,	20.3	4, 19.4
5,	20.2	5, 19.3
6,	19.9	6, 20.2
7,	19.6	7, 20.8
8,	19.6	8, 21.4
9,	19.8	9, 22.6
10,	19.9	10, 23.2
11,	19.9	11, 23.2
12,	19.8	12, 23.3
13,	19.5	13, 23.4
14,	19.1	14, 24.6
15,	18.9	15, 26.1
16,	18.5	16, 26.6
17,	18.5	17, 26.5
18,	18.7	18, 26.2
19,	18.6	19, 26.0
20,	18.4	20, 26.0
21,	18.2	21, 25.8
22,	18.0	22, 25.6
23,	17.8	23, 25.0
24,	17.8	24, 24.4
25,	18.3	25, 23.9
26,	19.1	26, 23.4
27,	19.4	27, 22.7
28,	20.5	28, 22.2
29,	20.7	29, 22.2
30,	20.6	30, 22.7
		31, 22.5

2729 The court adjourned court until Monday, November 25, 1912, at 10:30.

2730 Mr. CHIPERFIELD: I understand that this copy may go into the record as a continuation of the examination of Mr. Peterson.

The COURT: That was the agreement.

Mr. CHIPERFIELD: Was that the understanding?

The COURT: That was the understanding and if any-
2731 thing is wrong before the case goes to the jury you may call attention to it and it shall be modified accordingly.

RIVER STAGES AT LA SALLE, ILLINOIS, AT 7 O'CLOCK A. M. AS SHOWN BY THE RECORDS IN THE UNITED STATES WEATHER BUREAU OFFICE.

1908.

	Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1						22.1	14.9	12.6	11.8	11.5	11.6	12.5
2						21.7	14.8	12.5	11.7	11.4	11.5	12.3
3						21.3	14.8	12.5	11.7	11.4	11.5	12.2
4						20.8	15.1	12.4	11.7	11.4	11.5	12.2
5						20.4	15.0	12.4	11.7	11.4	11.6	12.2
6						20.0	14.9	12.3	11.7	11.4	11.6	12.2
7						19.6	14.8	12.2	11.7	11.5	11.6	12.2
8						19.3	14.8	12.2	11.7	11.6	11.6	12.6
9						19.0	14.7	12.1	11.6	11.6	11.5	13.2
10						18.6	14.6	12.1	11.6	11.5	11.5	12.8
11						18.2	14.5	12.0	11.5	11.5	11.5	12.9
12						17.9	14.3	12.0	11.5	11.5	11.5	12.6
13						17.7	14.0	12.6	11.5	11.4	11.5	12.3
14						18.1	14.0	13.3	11.4	11.4	11.5	12.1
15						18.2	13.9	12.7	11.4	11.4	11.6	12.1
16						18.0	13.7	13.0	11.4	11.4	11.6	12.2
17						17.7	13.7	13.0	11.4	11.5	11.6	12.3
2731 18						17.5	13.7	12.9	11.5	11.6	11.6	12.5
19						17.4	13.6	13.0	11.6	11.4	11.6	12.6
20						17.1	13.6	12.8	11.6	11.5	11.8	12.4
21						16.9	13.4	12.7	11.6	11.5	11.9	12.2
22						16.6	13.3	12.5	11.5	11.5	11.8	12.3
23						16.5	13.0	12.4	11.5	11.5	11.9	12.5
24						16.3	12.9	12.4	11.5	11.5	11.9	12.5
25						16.0	12.9	12.1	11.5	11.6	12.0	12.3
26						15.7	12.9	12.0	11.5	11.6	12.3	12.3
27						15.5	12.8	12.0	11.5	11.6	12.4	12.3
28						15.3	12.8	11.9	11.5	11.6	12.1	12.3
29						15.2	12.7	11.9	11.5	11.6	12.2	12.2
30						15.0	12.7	11.8	11.5	11.6	12.3	12.3
31							12.6	11.8		11.6		12.2

RIVER STAGES AT LA SALLE, ILLINOIS, AT SEVEN O'CLOCK A.
M., AS SHOWN BY THE RECORDS IN THE UNITED STATES
WEATHER BUREAU OFFICE.

1909.

	Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1	13.6	13.7	20.8	16.7	22.3	16.5	16.9	13.6	13.7	13.1	13.5	17.7
2	14.0	14.7	20.6	16.6	22.7	16.3	16.5	13.5	13.5	13.1	13.6	17.6
3	14.8	15.2	20.5	16.5	22.6	16.2	16.3	13.5	13.4	13.0	13.6	17.5
4	15.2	15.4	20.2	16.3	22.3	17.0	15.9	13.5	13.4	12.9	13.6	17.5
5	14.4	15.7	19.9	16.1	21.9	17.5	15.7	13.5	13.3	12.9	13.6	17.5
6	12.9	14.2	19.6	16.1	21.4	17.6	15.7	13.4	13.2	12.9	13.6	18.0
7	12.4	14.3	19.5	16.5	21.1	17.3	15.9	13.3	13.1	12.9	13.5	18.1
8	12.2	14.4	19.2	17.1	20.8	17.1	16.1	13.3	13.1	12.8	13.7	18.2
9	13.0	14.7	19.1	17.2	20.2	18.1	15.9	13.2	13.2	12.8	13.8	18.3
2732 10	13.3	15.5	19.4	17.3	20.4	18.9	15.8	13.2	13.1	13.0	14.4	18.3
11	*	15.6	19.4	17.3	20.1	18.8	15.8	13.1	13.1	13.0	14.4	18.5
12	*	16.2	19.2	17.2	19.9	18.7	15.7	13.1	13.0	13.0	14.6	18.7
13	*	17.9	19.0	17.2	19.8	18.7	15.5	13.7	12.9	12.9	14.5	19.0
14	*	17.5	18.9	18.7	19.6	18.4	15.3	14.3	13.0	12.7	14.5	19.6
15	*	16.8	18.6	19.5	19.4	18.1	15.3	15.4	13.2	12.7	14.6	20.1
16	*	17.3	18.5	19.6	19.3	17.8	15.4	16.1	13.2	12.6	14.6	20.6
17	*	17.7	18.2	19.7	18.9	17.6	15.4	16.2	13.1	12.6	15.0	20.5
18	*	17.9	17.9	19.8	18.6	17.3	15.3	16.0	12.9	12.6	15.8	*
19	*	18.4	17.8	20.2	18.2	17.1	15.0	15.7	12.9	12.5	16.1	*
20	*	19.3	17.6	21.4	17.9	16.9	14.8	15.5	12.8	12.6	16.2	*
21	*	21.6	17.5	21.4	17.6	16.7	14.7	15.1	12.8	12.7	16.3	*
22	*	20.4	17.3	21.9	17.4	16.5	14.6	14.8	13.1	12.8	16.1	*
23	13.7	20.6	17.3	22.4	17.1	16.5	14.5	14.6	13.3	12.9	17.0	*
24	13.1	21.0	17.2	22.2	16.8	16.5	14.4	14.4	13.4	13.0	18.7	*
25	12.9	21.5	17.0	22.0	16.5	16.5	14.3	14.3	13.3	13.3	18.9	*
26	12.9	21.3	16.9	21.5	16.5	17.0	14.1	14.2	13.2	15.5	18.8	*
27	13.0	21.2	17.0	21.2	16.8	17.7	14.0	14.1	13.2	13.8	18.7	*
28	13.0	21.1	17.1	20.7	16.8	17.7	13.9	14.0	13.3	13.8	18.4	*
29	13.2		17.0	20.2	16.7	17.6	13.8	14.0	13.2	13.7	18.1	*
30	13.3		17.0	21.1	16.7	17.2	13.8	13.9	13.2	13.7	17.9	*
2733 31	14.0		16.9		16.6		13.7	13.8		13.6		*

1910.

	Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1	*	*	20.1	17.4	17.7	18.4	13.8	12.3	12.2	12.8	12.4	12.4
2	*	*	20.5	17.1	18.0	18.3	13.7	12.2	12.2	12.7	12.4	12.0
3	*	*	20.8	16.9	20.4	18.2	13.5	12.2	12.2	12.6	12.5	12.0
4	*	*	21.2	16.7	21.0	17.9	13.3	12.2	12.3	12.8	12.5	12.2
5	*	*	22.0	16.7	20.7	17.8	13.1	12.1	12.3	12.9	12.5	12.1
6	*	*	21.9	16.7	20.2	17.7	13.1	12.0	13.0	12.9	12.4	12.0
7	*	*	22.2	16.5	19.5	13.0	11.9	12.9	13.0	13.0	12.3	12.2
8	*	*	22.5	16.4	19.3	17.3	12.9	11.9	13.1	13.2	12.3	12.7
9	*	*	22.3	16.2	19.1	17.1	12.8	12.0	13.5	13.4	12.4	14.0
10	*	*	22.0	16.0	18.9	16.8	12.8	11.9	13.3	13.3	12.5	13.9
11	*	*	21.8	15.8	18.6	16.6	12.7	11.9	13.0	13.2	12.5	13.9
12	*	*	21.6	15.6	18.4	16.4	12.7	11.9	12.8	13.2	12.5	13.6
13	*	*	21.5	15.5	18.2	16.2	12.6	11.9	13.0	13.1	12.5	13.5
14	*	*	21.4	15.3	17.9	16.0	12.6	11.8	12.8	13.0	12.4	*

*River frozen; no reading made.

RIVER STAGES AT LA SALLE, ILLINOIS, AT SEVEN O'CLOCK A.
M., AS SHOWN BY THE RECORDS IN THE UNITED STATES
WEATHER BUREAU OFFICE.

1910.

	Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
15	*	*	21.4	15.3	17.7	15.8	12.6	11.8	12.9	12.9	12.4	*
16	*	*	21.2	15.3	17.5	15.5	12.6	12.4	13.0	12.8	12.5	14.2
17	18.8	*	20.8	15.4	17.4	15.4	12.6	12.4	12.9	12.7	12.5	14.0
18	18.8	*	20.6	15.4	17.4	15.3	12.9	12.2	12.9	12.7	12.5	13.9
19	20.1	*	20.3	15.5	17.1	15.1	13.1	12.1	12.8	12.6	12.4	13.6
20	20.7	*	20.1	15.5	16.9	14.9	13.2	12.1	12.8	12.6	12.4	13.6
21	21.3	*	19.8	15.5	16.7	14.7	13.2	12.1	12.8	12.7	12.4	12.7
2734 22	21.9	*	19.5	15.4	17.0	14.3	12.8	12.1	12.7	12.6	12.3	13.6
23	22.2	*	19.5	15.4	17.0	14.3	12.8	12.1	12.7	12.6	12.3	13.6
24	22.2	*	19.2	15.6	17.4	14.2	12.9	12.1	12.7	12.5	12.3	13.4
25	22.2	*	19.0	15.8	17.8	14.0	12.8	12.5	12.7	12.6	12.3	*
26	22.1	*	18.6	16.1	18.2	13.8	12.6	12.4	12.7	12.5	12.3	*
27	22.0	*	18.4	17.0	18.4	13.7	12.4	12.3	12.9	12.6	12.3	*
28	22.2	*	18.2	17.7	18.2	13.8	12.4	12.3	12.9	12.6	12.3	*
29	22.4	*	18.0	17.9	18.2	13.7	12.4	12.2	12.9	12.6	12.4	*
30	22.4		17.8	17.9	18.2	13.8	12.4	12.3	12.9	12.6	12.4	*
31	22.1		17.7		18.4		12.3	12.3		12.4		*

1911.

	Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1	*	17.4	17.5	14.4	15.8	14.3	13.0	12.7	12.4	17.3	17.0	18.6
2	*	16.9	17.2	14.2	16.3	14.3	12.9	12.7	12.4	17.6	16.9	18.6
3	*	16.5	17.1	13.6	16.5	14.4	12.9	12.5	12.3	18.3	16.8	18.5
4	*	16.0	16.8	13.8	16.6	14.4	12.9	12.4	12.3	18.9	16.6	18.2
5	*	15.8	16.5	14.4	16.4	14.1	12.8	12.4	12.3	19.2	16.5	18.1
6	*	15.6	16.4	15.5	16.2	14.0	12.7	12.4	12.4	19.0	16.4	17.9
7	*	15.5	16.2	16.4	16.0	14.0	12.8	12.4	12.6	18.7	16.6	17.7
8	*	16.0	16.0	16.6	15.8	13.8	12.9	12.6	12.6	18.5	16.6	17.6
9	*	16.1	15.9	16.4	15.5	13.7	12.9	12.4	12.7	18.3	16.5	17.6
10	*	*	15.7	16.3	15.2	13.6	12.9	12.1	12.7	18.2	16.5	17.7
2735 11	*	*	15.7	16.0	15.2	13.6	13.0	12.1	12.8	18.0	16.5	18.4
12	*	*	15.7	15.8	15.1	13.7	12.8	12.6	13.0	17.8	17.4	18.8
13	*	15.6	15.7	15.8	14.7	13.7	12.7	13.5	12.9	17.6	18.6	18.8
14	17.0	16.6	16.2	15.7	14.4	13.6	12.8	13.3	12.9	17.5	19.0	18.8
15	18.6	19.5	16.4	16.1	14.3	13.4	12.7	13.3	14.7	17.3	18.8	18.8
16	18.4	20.3	16.4	16.6	14.2	13.5	12.7	13.2	15.0	17.2	18.8	18.7
17	*	19.4	16.0	16.8	14.1	13.3	12.5	13.1	14.5	17.4	18.6	18.6
18	*	19.5	15.9	16.9	14.1	13.3	12.7	13.1	14.2	17.7	19.3	18.4
19	*	19.8	15.7	16.8	14.1	13.2	12.7	12.9	18.2	17.7	20.5	18.3
20	*	19.6	15.6	16.7	14.0	13.2	12.6	12.8	18.5	17.5	20.5	18.0
21	*	19.3	15.3	16.8	14.0	13.2	12.6	12.7	16.7	17.4	20.5	18.0
22	*	18.9	15.2	16.8	14.9	13.1	12.5	12.7	16.1	17.3	20.2	18.4
23	*	18.5	14.9	16.7	15.6	13.0	12.4	12.4	15.8	17.5	20.0	19.1
24	*	18.3	14.8	16.5	15.7	13.0	12.7	12.6	15.4	18.0	19.6	19.5
25	*	18.1	14.7	16.3	15.5	13.3	12.6	12.5	15.3	18.0	19.6	19.5
26	*	17.9	14.6	16.2	15.2	13.5	12.5	12.6	15.7	17.9	19.4	19.3
27	*	17.7	14.7	15.9	14.9	13.5	12.4	12.5	15.9	17.8	19.1	19.3
28	*	17.6	14.6	15.8	14.6	13.4	12.5	12.4	15.9	17.6	19.0	19.0
29	18.6		14.5	15.7	14.5	13.2	12.5	12.5	16.6	17.4	19.0	19.1

*River frozen; no reading made.

RIVER STAGES AT LA SALLE, ILLINOIS, AT SEVEN O'CLOCK A.
M., AS SHOWN BY THE RECORDS IN THE UNITED STATES
WEATHER BUREAU OFFICE.

		1911.											
		Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
2736	30	18.4		14.5	15.7	14.3	13.0	12.4	12.4	17.2	17.0	18.9	20.5
	31	17.9		14.4		14.3		12.4	12.4		17.0		21.2
2737		1912.											
		Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1	*	*	*	24.3	20.7	17.6	14.5	14.8	14.5	13.3	14.7		
2	*	*	*	24.4	20.8	17.5	14.4	14.9	14.4	13.4	14.9		
3	*	*	*	24.4	21.6	17.2	14.2	14.8	14.3	13.5	14.9		
4	*	*	*	24.0	21.8	17.1	14.1	14.5	14.3	13.5	15.0		
5	*	*	*	23.8	21.8	16.9	14.0	14.4	14.3	13.4	15.0		
6	*	*	*	23.6	21.7	16.8	13.9	14.3	14.3	13.3	15.1		
7	*	*	*	23.4	21.4	16.5	13.8	14.2	14.2	13.3	15.5		
8	*	*	*	23.1	21.1	16.2	13.7	14.2	14.1	13.3	16.0		
9	*	*	*	23.0	21.3	16.0	14.0	14.2	14.0	13.4	16.4		
10	*	*	*	22.6	20.2	15.8	14.0	14.3	13.9	13.4	16.5		
11	*	*	*	22.2	19.7	15.7	14.0	14.3	13.8	13.5	16.5		
12	*	*	*	21.8	19.7	15.5	14.0	14.2	13.7	13.9	16.4		
13	*	*	*	21.4	20.6	15.2	14.1	14.3	13.7	14.3	16.3		
14	*	*	*	21.3	21.3	15.2	14.1	14.3	13.5	14.3	16.5		
15	*	*	*	21.3	21.5	15.6	14.0	14.2	13.6	14.4	16.6		
16	*	*	*	21.0	21.5	15.9	13.8	14.2	13.7	14.6	16.6		
17	*	*	*	20.5	21.3	15.9	14.0	14.5	13.6	14.6	16.7		
18	*	*	20.5	20.3	21.1	15.8	14.3	14.4	13.5	14.6	16.5		
19	*	*	24.6	20.8	20.8	15.8	14.2	14.5	13.5	14.5	16.5		
20	*	*	25.8	21.1	20.5	15.8	14.1	15.6	13.4	14.4	16.3		
21	*	*	26.1	21.0	20.3	15.7	14.3	15.4	13.6	14.3	16.3		
22	*	*	25.5	21.1	19.7	15.5	14.3	15.8	13.6	14.6	16.1		
23	*	*	24.5	21.1	19.5	15.3	14.4	16.3	13.5	14.8			
24	*	*	23.9	21.0	19.1	15.1	14.5	16.3	13.4	15.0			
25	*	*	23.3	20.6	18.7	14.9	14.5	16.1	13.5	14.8			
26	*	*	23.5	20.5	18.4	14.7	14.5	15.7	13.5	14.8			
27	*	*	24.3	20.1	18.2	14.5	14.5	15.3	13.4	14.7			
28	*	*	24.5	19.3	18.2	14.3	14.5	15.1	13.3	14.7			
29	*	*	24.5	19.5	17.9	14.2	14.7	14.9	13.3	14.7			
30	*		24.4	20.3	17.8	14.2	14.6	14.7	13.3	14.7			
31	*		24.3		17.7		14.6	14.6		14.5			

*River frozen; no reading made.

2739 JOHN McANDREWS, a witness called for the defendant,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John McAndrews. I reside at Bradley,
Illinois. My business is drainage. I have been engaged
in that business for twenty years. During that time I
have operated in the Kankakee Valley in Indiana. The
2740 name of the ditching firm with which I have been con-
nected is McAndrews & Bradley. We have been engaged
in these operations. I have been engaged in Laporte
County, Laporte. The county next to Laporte is Knox.
Those counties are on the Kankakee River. I commenced
2741 operations there about fourteen years ago. The Kanka-
kee River was kind of a low valley, not really a ditch. It
was just kind of a dredge in places, filled up with a great
deal of filth and rushes and bars; not a very good water
course. It did not flow very good unless the water was
high. If there was high water it run pretty well. There
were obstructions in the Kankakee River. They consisted
of sand bars, rushes and willows, sunken logs; princip-
ally bars, sand bars. The size and character of those sand
bars, I would say, was from three and a half to four feet
in places. This is the same Kankakee River that con-
nects with the Desplaines River and forms part of the
Illinois. It was about sixty-five miles above Kankakee,
2642 where the river I speak of was in this obstructed con-
dition. It was about twenty or twenty-five miles from
Laporte, southwest. The river in high water would be
probably 300 or 400 feet wide in places; in low water
would be about 150 feet, probably. The character of the
land lying on each side of the river at that time was not
very good. It was marshy and wet and filled with rushes.
It extended a good ways back. That extended pretty

near up to Hanna. Hanna is about fifteen miles from Laporte; a little southwest of Laporte; that would be on the right hand side as you go down steam, or on the north. On the left hand side it was more hilly and valleys in between those hills and where those valleys or ravines run back, they would run back probably six or ten miles; low swampy ground. But the whole Kankakee Valley was pretty much of a swamp; must be 500,000 acres or more of swampy condition extending over the entire valley of the Kankakee. There was not much of anything growing in those swamps only rushes and pond lilies and things of that kind. There was very little timber in those swamps; along the edge of the Kankakee there was some timber. In this entire 500,000 acres there was a little farming on the high places, on the knolls. In 2744 the swamps themselves there was no farming. That extended up and down stream for about 100 miles. In those swamps at that time there was water. That water would be very deep. It would be so deep you would get 2745 wet with waders on, high rubbers. Well, about two feet and a half deep. That condition extended over probably 500,000 acres of that country. Water would stand upon this land. There was not much chance for the water to get away before the ditches were made. I started in to perform changing operations with reference to the Kankakee River. Well, we started out near that little Kankakee, at the upper end of the Kankakee River, and we carried that down to the B. & O. Railroad track. We put a ditch in about eight feet deep and fifty feet wide; dug 2746 it out with a steam dredge. That ditch was six and a half miles long. Below there a firm by the name of Pollard & Goff got it from below there. They carried the Kankakee on down I think about ten miles and a half. Their ditch was about sixty feet on top; about eight or ten feet deep. Then the Pontiac Syndicate, they formed

a drainage district and carried it on down about seventeen miles from there. Their ditch was from seventy-five to 100 feet wide; ten or twelve feet deep; seventeen miles long. I think the Pollard ditch was about ten and a half miles; probably a little bit more than that. We stopped at the state line. I think that brings it somewhere about
 2747 sixty miles to Momence. There was not anything done from Kankakee to Momence any more than to take out the rock at Momence. I think somewhere about 60,000 yards was taken out. That was at the place known as the ledge of rocks. There was a ledge of rock running right across the channel. In fact runs across the two channels. There is a double channel at Momence, one on the south side and the other running around on the north side. The north side one is the one they took the rock out of and the south side one is in its natural condition yet. The ledge of rocks came above the water. The south side channel would take more water in low water—the north side channel would take more water in low water than
 2748 the south side would but in high water the water seemed to go around the south channel more. I think the ledge of rocks extended about eighteen inches to two feet above the surface of the water before the change was made. After the change was made it done a great deal better but not enough out of it yet. I commenced my first section on the Kankakee about ten years ago. I know where English Lake is located. Well, English Lake was a bit of water with about twenty-five to thirty acres in it. It run from six inches to six feet. English Lake at that time had a communication with the Kankakee River.
 2749 The Kankakee River run right through the edge of English Lake. The condition of the stream before I commenced work on it was not very good. The lake wound off to the south and throwed up a bar across the Kankakee here and there and there was a little neck that run

out where the overflow went; probably fifty feet wide; that carried the water from the Kankakee River and also from English Lake. There was no other outlet except this little outlet unless it was in high water. In high water the water went over this little neck altogether. English Lake did not drain any of this country. There were tributaries coming into English Lake at that time. They
2750 came from the northeast. I know where the Yellow River was. The Yellow River is a river about forty or fifty feet wide and carries a great deal of water, and the length of it I don't know just how long it is. It comes from the south. I think it is about thirty-five miles long. Work was done on the Yellow River. I am familiar with the work that was done there. The Yellow River was improved for about ten miles and a half, up its channel, southeast. It came into the Kankakee about three miles above English Lake. The work that was done on the Yellow River, I think the bottom was forty feet by ten
2751 to sixteen feet on top. The Yellow River was always a pretty good stream because it had washed out; it had made itself, I suppose, from the looks of it, and in case of high water it carried a good bit of water. The bottom of it was a little bit higher than the bottom of the Kankakee and it poured an awful lot of water into the Kankakee. These ten miles and a half I have spoken of began at the Kankakee River and extended to the Yellow River. We built a boat in English Lake, a dredge boat, and we dug a mile and a half up through English Lake to the boundary line of our work. This work was all laid from where Pollard & Goff quit; ten and a half miles below the B. & O. Road. They got a portion of the Kankakee River the same time we did. I dug upstream and through English Lake a mile and a half and then I turned the boat
2752 around in English Lake and came on down through the Kankakee River. I dug down then six miles and a half;

all of it was in the Kankakee River. I dug right through English Lake 106 feet wide and about twelve feet deep. That connected with the Kankakee River. After those improvements and the excavations were made in the Kankakee River the Mockler ditch was made and the Place
2753 ditch. I know the location of a ditch known as the Box ditch. That comes from the south. The Mockler and Place ditches come from the north, the northeast. Well, for about 16,000 acres on the north side, I think there is a ditch on every section; over thirty miles of ditch in them 16,000 acres. I have told about the improvements on the main stream down to the Illinois line. Since that
2754 time ditches have been constructed on both sides of this main improvement. There is one ditch coming from the north that connects pretty near direct with the Yellow River. They both enter the Kankakee along on one side of the Kankakee. The Yellow River on the south side and about ten miles and a half, the ditch enters on the south side, both going into the Kankakee about the same place but one on each side of the ditch. There are ditches down to the Illinois line on either side. A great many ditches, tributaries. From these ditches that extend off north and south there are laterals. There are lateral
2755 drains extending into these ditches. Before I commenced work there was no tile used in that 500,000 acres of land. I can't say how extensively tile has been used since but a great deal of tile has been put in. These ditches all go to the Kankakee and take water there. The Mockler ditch has a base of forty feet on the bottom and is about ten feet deep. The Yellow River must be about sixty feet wide on top. The ditch put through English Lake was 106 feet. The Box ditch is about thirty feet
2756 on top. The Place ditch is, I think, about the same size as the Mockler, about forty feet. The main ditches run from about twenty-five to thirty feet; forty feet bottom.

Before the time I commenced operations the rainfall that fell on that 500,000 acres just absorbed and soaked away. Now, it runs down to the Kankakee. This 500,000 acres now is good farming land, pretty much along the entire
 2757 length of which I spoke annual crops are now being raised there. They are selling that land now, I understand, for \$125 an acre. On that 500,000 acres, where there was a swampy condition; there is no water standing in that condition now. I have known the Kankakee River 16 years. Since the completion of this improvement I think the water is a little higher than it used to be in the Kankakee River at Kankakee. In times of ordinary water I would say it was from four to five feet higher near the bridge at Kankakee. I am acquainted
 2758 with the Vermillion country, the Vermillion River. I did drainage operations above the Vermillion River in Ford County, Illinois. I knew the Vermillion before I commenced operations there. That is, the Big Vermillion. It is the same Big Vermillion that empties into the Illinois River just above La Salle. That river was something like the Kankakee before I commenced operations. A little sluggish and not very deep; middling wide. There was some obstructions in it, but not as bad as the Kankakee. I didn't do much work on the Vermillion. I did my work above the Vermillion. I com-
 2759 menced my work above the Vermillion in '86. Well, that would be 26 years ago. We started very close to the Kankakee line in Ford County, a distance of about seven miles and a half, and we brought a ditch down to the Vermillion; a pretty good sized ditch, I think, if I remember right, about thirty feet top and fourteen foot bottom. The depth of that ditch was from seven and a half to eight feet. It passed through a pretty good country, but swampy and marsh. I presume there were 200,000 acres of swamps there before I commenced op-

erations. I made a ditch seven miles and a half long there, the main ditch. There were lateral ditches made in each direction. There was one started up pretty near 2760 at the head of the main ditch, only about five miles south, and run down and connected with the main ditch about a mile and a half above the Vermillion; and then there was another ditch started lower down and also connected with the main ditch that went into the Vermillion River; and then there were four ditches on the south side that came from the southwest of Piper City and also went into the Vermillion and that went down the Vermillion about a quarter of a mile to get to those ditches below and into Livingston County, and we stopped there. At the time I commenced operations in the Vermillion country there was no improvement at all, or tile used in that 200,000 acres of land. After the improvement was completed the country was used for farming. It is today all farm land; the best farm lands.

2761 Seven years ago there was a channel put from the head of the Vermillion River to the railroad—I think the Illinois Central—a distance probably of seven miles and a half, maybe more. I wouldn't be sure about the distance. That channel was seven and a half miles long and I think something over 100 feet top. It was about 8 to 10 feet deep. Before these operations were performed that transformed this country from swamp to farm lands, the rain that fell on that country just laid there. Since, the ditches and the tile take it away. They convey it practically to the Vermillion River and the Vermillion River empties into the Illinois River. I have 2768 done drainage operations on the Iroquois. I dug a ditch in Iroquois. I think it was about ten miles and a half long; I think somewhere about 15 or 16 years ago. The country was a little swampy, of course; not as bad as the others. I think there was somewhere about 10,000

2763 acres in the district. We dug this ditch and run it into the Iroquois River. The Iroquois River empties into the Illinois River. There was other work done in the same vicinity by others. I think about 200 to 250,000 acres of land was drained by others than myself. Below 2764 the point where I left off with my drainage operations the swamps ceased on the Kankakee. Below where the work ceased on the Kankakee was a flat country. On the Vermillion below there was a pretty good fall. I have been engaged in other drainage work on the watershed of the Illinois. I done some work in Livingston County on a ditch known as the Oliver ditch. That coun- 2765 try was more of lakes and ponds, swampy. There were 2766 big bodies of water, probably five to seven acres in them, and then there would be a neck running from one to the other; a little channel running down and they would run away, soak away. Those lakes extended over probably five miles. We dredged there at the upper end and came down through those lakes, a distance of about 12 or 12½ miles. We connected that ditch with the river. I forget the name of the river it went into. It went into a little river or creek down below Chatsworth. It finally goes to the Illinois. I think there were about 12,000 acres in those operations. I think the ditch was six foot 2767 bottom and about seven and one-half feet deep. I constructed that ditch about 12 years ago. After that ditch was constructed there was an increase in the use of tile. Today it is pretty good land. It is used for farming. Before that time it had not been very much use for farming—pasture principally.

Cross-Examination by Mr. O'Connor.

The last work I testified to was located down near Chatsworth. Chatsworth is about forty miles from La 2768 Salle. I think it would be a little southwest. All the

work that I did in constructing what is known as the Oliver ditch was completed about 12 years ago. I know pretty near where Henry is. I know that is a dam at Henry. I don't know whether Chatsworth is further
2769 down the river than Henry. La Salle might be more than 25 miles from Henry; I don't know. No, sir, I don't know where Lake Senatchwine is. I am not very well acquainted on the Illinois. That work I did on the Iroquois was all completed 15 or 16 years ago. The water that came into the Iroquois on account of any
2770 drainage I put there some 15 or 16 years ago was coming into the Illinois prior to the year 1903. We did not change the natural flow of the water around Chatsworth. We followed the water. We did the same thing up in Iroquois. The first work I did along the Vermillion was in the year 1886. In that year put in a drainage system to drain some 200,000 acres of land. I never was along on the Vermillion running from a point somewhat east of the Illinois Central right of way at La Salle, extending as far as Streator, Illinois, subsequent to the
2771 year 1886, except on the train, as I went through on the train. You can see some from the train. I have been on the Vermillion River, from the Illinois Central to the head of the Vermillion, along the ditch. The land I drained in the year 1886 was in the natural water shed of the Vermillion. I don't know much about the Vermillion River anywhere in or about La Salle, subsequent to the year 1886. I walked over that work with a view of taking it. That part of the river I am pretty well
2772 acquainted with. It was nine or ten years ago that I started that work on the Kankakee. I know a man by the name of Tuesberg. I have known him for 14 years. He did some of the work I mentioned down in the Kankakee. I have not testified to any work done any place that did not come under my own personal observation. I

done the most of the work on the Kankakee myself. I
 2773 have been along the Vermillion in the past ten years;
 about seven years ago. The boat was there to work
 there on the Vermillion River. I was there afterwards.
 2774 I am acquainted with the condition of the Kankakee
 River at Momence during the summer time. I think it is
 higher now than it was during the '90's. I have actually
 observed it. I think it is higher now in the summer time.
 I think it is probably from three and a half feet to four
 feet higher. There is no doubt about it in my mind
 2775 that it is higher. I think we did put water into the
 Kankakee River where the natural water shed was not
 in that direction. Well, we done it this side of English
 Lake where the oil pipe crosses the Kankakee. I pre-
 2776 sume it was the natural water shed. They have brought
 no water to the Kankakee where the level of the ground
 or the incline of the ground was not in that direction.
 There is a difference today in all that land down there
 as to the level of the water; I think about four and a
 2777 half feet. Most of the sub-soil is sand and gravel. A
 heavy rain would affect the tile drains and ditches. If
 the ground absorbs the rainfall, it would naturally go
 to the tile and from the tile to the ditch. It takes a
 2778 pretty good rainfall to put the water on the surface of
 the ground. It would take a pretty good rainfall to get
 those ditches in working order. There don't a great
 2779 deal of water stay in the ditches. When English Lake
 was drained the water ran off a good deal of it. I know
 the condition of the Kankakee River at Momence during
 the summer time. I was there last summer. I think I
 saw it; about July or August I was there. The Kankakee
 River during those months was about 150 feet wide, I
 would think.

2781 Mr. CHIPERFIELD: There are a couple of questions,
 Mr. O'Connor, that I overlooked. I didn't have a chance

to go over it with Mr. McAndrews. We both just got in town. I will ask them now, if it is agreeable.

The COURT: Yes.

Direct Examination (continued) by Mr. Chipperfield.

Before I commenced work on the Kankakee River there were bends in the river. The biggest bend was located below English Lake, right where the oil pipe crosses the Kankakee. That is what they call the Ox Bow Bend.

2782 It was three and a half miles around that bend. It was about half a mile or less across. In the Kankakee River, where I ceased my work, or thereabouts, there has been a difference in the water stage of the Kankakee River of about three and a half to four feet. Close to the end there, at the county line, the proposition was that the Kankakee would be carried to Momence, and the syndicate—Mr. Tuesberg and the rest of them—advised me to leave the boat there with the prospect of continuing the work. I took the machine off the boat and bored a hole in her and sunk her; let her sink, filled her with water, for the purpose of preserving the lumber from the sun and rain and so on. And of course I would go there once in a while to see how that boat was, with a view of raising her, taking her out and putting her some-

2783 where else, but the water has been so high that I would have to build a place at the side, put a dam around her and pump the water out to get her up, and I have been waiting for the water to go down and it hasn't gone down so I could get at her. That is the reason I know the water is higher than before we straightened the Kankakee.

Cross-Examination (continued) by Mr. O'Connor.

I think I noticed the water at Momence in the Kankakee in 1910. I have not noticed the water at Wilmington.

2784 Yes, all of this water passes by Wilmington. The Kankakee comes into the Illinois River, I can't just recall the name of that town now. I practically know where Morris is. I have been in it, but I didn't pay much attention to it. I don't know exactly where the Kankakee comes into the Illinois. I have been through there, but I never took any particular notice of it. I know where Devine, Illinois, is located. I couldn't say whether Devine is
 2785 east or west of the point where the Kankakee comes into the Illinois. I came to Ottawa yesterday; have been here ever since. I am not getting anything by way of compensation. I never asked the company for a cent. It is not understood that I will be paid anything by the Sanitary District in here. I came here on notice from Mr. Beebe.

Mr. CHIPERFIELD: Now, if your Honor please, I want to introduce in evidence a certified copy of a map of the State of Wisconsin, showing the water shed of the
 2786 Fox and Desplaines River, and I want to ask leave to withdraw the original upon filing a compared copy.

The COURT: I grant that.

Mr. CHIPERFIELD: I want to ask leave to introduce and I offer in evidence a map of the State of Indiana, showing the water shed of the Kankakee River, a certified copy, and I desire to ask leave to withdraw the original upon the filing of a compared and precise copy.

The COURT: I grant that.

Mr. CHIPERFIELD: I also want to ask leave to introduce a map of the State of Illinois showing the water shed of the Illinois River and its tributaries within the State of Illinois and desire to have leave to withdraw the original, so certified, upon the filing of a compared and precise copy.

The COURT: I grant that.

2787 Whereupon precise copies of said maps were substituted and marked Exhibits 22, 23 and 24.

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
HON. S. W. LAMOTHE, COMMISSIONER

MAP
STATE OF WISCONSIN.

Compiled from the official records of the General Land Office and other sources.

Published by authority of

HAVERLY, MINN. & CO.

Chicago, Ill., U.S.A.

1901.

Scale: 1" = 40 miles.

LEGEND.

- U.S. Land Office
- Rail Road, Completed
- Rail Road, Proposed
- Light House
- U.S. Life Saving Station
- © County Seats





ANALYTICAL
Circles
County lines
Railroad lines
City limits
County seats
State boundaries
Indian reservations
Unsettled land
Public lands
Indian land

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WM. A. J. SPARKS, COMMISSIONER
STATE OF INDIANA
Scale 1 inch = 12 Miles.

1886.
Compiled from the official records of the General Land Office and other sources by
GEO. L. MAYO
Chief of Drafting Div. G.L.O.

2788-2789 Certificates accompanying said maps, being certified by the Department of the Interior of the United States.

2792 EXHIBIT 25.

Exh. 25



Exh. 25
SANITARY DISTRICT OF CHICAGO.
MAP OF
ILLINOIS RIVER
WATERSHED.

SCALE.
FOUR MILES TO ONE INCH.

CHICAGO, NOV. 1903.

CLYDE D. THE SUPPLEMENTARY DATA ADDRESSING ON THIS MAP HAVE BEEN AFFIRED UNDER THE DIRECTION OF ENGINEER, DIVISION ENGINEER
THE GEO. DATA INDICATE PRECIPITATION STATIONS OF THE U.S. WEATHER BUREAU.

2794 FRANK J. TRAUT, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Frank J. Traut. I reside at Beardstown, 2795 Illinois. I am an engineer and contractor. I have resided in Beardstown 18 years. I know the Illinois River from the Henry dam down to the mouth of the stream. I am familiar with the river from Hennepin down. I am acquainted with the drainage districts that have been constructed in that river. I have constructed some of those districts. I have been connected with the construction of drainage districts in the valley of the Illinois for 18 years.

The drainage districts that have been constructed in the valley of the Illinois, and the areas of the same which are known to me starting at Hennepin, are as follows:
 2796 Hennepin District, on the east side of the river, 3,000 acres. East Peoria District, 800 acres. Lamarsh District, near Pekin, on the west side of the river, 2,500 acres. Spring Lake District, on the east side of the river, 14,000 acres. Lacey District, opposite Havanna, 2797 about 5,500 acres. Otter Creek District, on the west side of the river, 3,000 acres. Coal Creek District, opposite Beardstown, on the west side of the river, 7,000 acres. Crane Creek District, on the west side of the river, just below Coal Creek District, 5,500 acres. Meridosia Lake District, on the east side of the river, 5,000 acres. McGee Creek District, opposite Meridosia, on the west side of the river, 12,000 acres. Big Swan District, on the east side of the river, opposite Florence, 14,000 acres. Hill View District, on the east side of the river, 13,000 acres. The Roberts District, Kaiser District and Hartwell District, which have, combined, contained 12,000

2798 acres. The Keetch District, sometimes called the Fairbanks District, 10,000 acres. The Eldred District, 10,000 acres. The Nutwood District, 11,000 acres.

There are a number of proposed districts, some of them under way and some which have not yet been completed. The aggregate acreage of these districts is about 130,000 acres.

The levees constructed by these districts on the river side average from 12 to 20 feet in height above the ground on which they were built. The first district was constructed in 1890, a small district. Most of them have 2799 been constructed in the last 10 or 12 years. From the map Exhibit 25, I have located La Salle. (And the witness then proceeded to point out on the map the location 2800 of the various drainage districts described by him.)

I was connected as engineer or contractor with nine or ten of these districts.

In Hennépin District the length of the levee along the 2801 river is about 4 miles; East Peoria, $1\frac{1}{2}$ miles; Lamarsh, 4 miles; Spring Lake, 16 miles; Lacey, 4 miles; Otter Creek, $1\frac{1}{2}$ miles; Coal Creek, 8 miles; Crane Creek, 2 miles; Meridosia, 7 miles; McGee, 9 miles; Big Swan, 10 miles; Hillview, 8 miles; Hartwell, 10 miles; Fairbanks, 8 miles; Eldred, 10 miles; Nutwood, 10 miles. Some of these districts are pretty close to the river and some of them are less than 100 feet from the edge of the river bank, extending back to 400 feet.

2802 The Hennepin District will average 100 feet from the river. East Peoria is less than that. Lamarsh from 50 to 100 feet from the river. Spring Lake was 100 feet at one place to about 600 feet. Lacey is 100 feet from the river bank. Otter Creek half a mile from the river bank. Coal Creek 100 feet from the bank. Crane Creek 100 feet. Meridosia is 250 feet from the bank of Meridosia Lake. McGee 100 to 300 feet from the bank of the

river. Big Swan from 200 to 400 feet from the bank. Hill View from 200 to 400 feet from the bank. Hartwell 2803 from 100 to 300 feet from the bank. Fairbanks from 100 to 300 feet from the bank. Eldred from 200 to 400 feet from the bank. Notwood from 200 to 400 feet from the bank.

Before the levees were constructed the Illinois River in times of high water covered practically all of the lands enclosed by the levee districts. In the instance of the Meridosia Lake and the McGee Creek levee, they are opposite each other for a distance of about four miles. I have personally been in each of these levee districts many times and the information which I am giving the jury is based upon personal observation.

In the vicinity of Peoria before these levee districts were constructed, in times of extreme high water the 2804 river would be four miles in width; at Havanna about 4 miles; Beardstown 4 to 6 miles; Meridosia 5 to 6 miles; Kampsville 4 miles. I cannot state how wide it is at the mouth of the river, but it gets very wide. I have ob- 2805 served the Mississippi River in times of high water. In the Mississippi River during high water during 1903, we had dead water back in the Illinois up to one mile below Beardstown, 88 miles from the mouth of the river.

Cross-Examination by Mr. O'Connor.

Never have been in the employ of the defendant. Not 2806 in their employ except in the sense I have been called to testify in this case.

2807 I mean to give the exact acreage in these various districts from my personal knowledge acquired from the reports of the engineers in making their reports for the commissioners, which were filed in the County Court giving the acreage as to the acreage in the 40 tracts. My testimony as to areas is based upon something that some-

body else did. I never measured up the acreage in the district. I would know it just as well as anyone else knows it. The commissioners of the district never measure it up, but they take the engineer's measurements and figure up the assessments. I can judge somewhere near 2808 the acreage in the district by looking at it and going through it.

2809 All the levees I refer to are farther down the river than the dam at Henry, except the Hennepin.

2810 CHARLES H. TUESBERG, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Charles H. Tuesberg, I live at LaCrosse, LaPorte County, Indiana. My business is managing lands. I have been so engaged for 12 years. I am acquainted with the larger portion of the Kankakee River in Indiana and the lands adjacent thereto. Before the reclamation was commenced I was acquainted with the entire valley. I first went through it some 15 or 16 years 2811 ago; it was a swampy country. There was no artificial drainage except a little in Lake County.

The valley of the Kankakee extends from near South Bend in Indiana to the state line, about 80 or 90 miles straightened. The valley embraces in the neighborhood of a million acres; with the exception of sand ridges the probability is three-fourths of the valley was low, wet swampy land. The valley, a large portion of it at least, has only about a foot of fall to the mile. So it lays very level in there and was in a very swampy condition on account of having no drainage.

2812 Before the reclamation operations were commenced, the swamps consisted of level pieces of land covered by

marsh hay, cat tails and rice straw. In the spring of the year there would be water in the marsh. The marsh east of LaCrosse would be two or three or four miles in width and probably from six inches to two feet in depth. Before there was artificial drainage the water accruing from rainfall in that section of the country remained largely on the land in the low places until it was absorbed by atmospheric conditions. After the June freshets, when the warm weather came and the weather was drier, the water would be absorbed, both sink away into the ground and being taken up into the atmosphere.

The river is very crooked and very sluggish. In its natural state it has about $4\frac{1}{3}$ to 5 inches of fall to the 2813 mile. It is very crooked.

By reference to Exhibit 25, it appears that the upper end of the valley, the City of South Bend on the St. Joe River, is located at the head of the valley. The valley is, perhaps, between South Bend and the head waters of the Kankakee, is only two or three miles on the divide. It is a marshy country, all of this territory. Very much of that was covered with muck land. It extends from South Bend or near South Bend to a point near the town of Momence, about seven miles in Illinois from the state line. The heavy mark on the map indicates the Kankakee River proper.

I am familiar with the tributaries of the Kankakee 2814 River in Indiana, the largest of which is the Yellow 2815 River. Some portions of the valley are wider than others. It probably extended ten or eleven miles and some places a little wider than that before the reclamation was commenced.

I knew English Lake before reclamation proceedings were commenced. It was a low flat marsh, the water remained on usually from six inches to a foot in depth.

Some seasons it would dry up but mostly water was there. It covered six to eight square miles. A number
 2816 of small creeks and sloughs flow into it. English Lake is connected with the Illinois River through the natural channel of the Kankakee.

The Kankakee River in the state of nature at its upper end was known as the Kankakee swamps. This territory had a large number of muck lands composed of vegetation that during the centuries had grown and filled up the smaller lakes. Some of these lakes were ten to thirty feet in depth. They generally filled with what is known as muck which made it dangerous for animals to cross.
 2817 In that territory there was a large number of those parts that had been formerly lakes, that is one of the reasons it held the water as it did, there wasn't enough natural drains.

With reference to these the river lies in the lowest portion of course, and formed the only drainage there was for these bogs and swamps and other low places. The river only averaged a fall of a foot to the mile.

In crossing and cutting from the Baltimore & Ohio running down 22 miles and a quarter on a survey we cut across the river 70 times, so you can see how crooked the
 2818 stream was. The upper portion was probably 20 to 30 feet in width and from three to four feet in depth and as you come down it gets wider. There are a great many bends in the river. Some of them were very abrupt and in traveling in a skiff you would go back almost to the point of starting in going, for instance, a distance of a quarter of a mile you would have to go around islands.

2819 Down towards the Momence line the river was probably 70 or 80 feet in width and shallow.

About 1901 reclamation proceedings commenced. The valley on the north side of the river from South Bend

to Momence is a strip of clean prairie with very little timber. On the south side it is very different. The territory is interspersed with sand dunes, scrub oak, timber, sloughs and swales, and is very much more difficult to drain, and the river is so sluggish that the land was never cultivated. The land which I have just described was embraced within the description of the swamps which I gave a short time ago.

- 2820 In improving the river the river proper was commenced at the Baltimore & Ohio Railroad. That is the eastern portion of LaPorte County, about the center. It is directly west of Walkertown. The work was executed by a powerful dredge. The bottom of the ditch was started 40 feet in width, the top 56 feet, with an average of 8 feet in depth. That was known as the Place Ditch. It ran down nearly ten miles. It cut through the bends
2821 at the most advantageous points.

In connection with the Plate Ditch, there were 18 miles of laterals between Walkertown and the river. The laterals were made 18 to 22 feet in width and from 5 to 6 feet in depth, with branches. Some of them extended back 8 or 10 or 12 miles into the country. They followed the contour of the low land, some of them farther apart than others.

In connection with the branches that extended from the laterals, tile has been used in carrying on the reclamation work.

- 2822 There were swamps on either side of the Plate Ditch then. Now there are farm lands well developed and drained. Then there were only cabins and shack houses on the sand dunes, now the farms are well improved.

The next section of work done on the river commenced a little south of the Fort Wayne Railroad, east of Hanna, extending on the west line of LaPorte County, 17 miles.

The ditch bottom was widened to 45 or 50 feet and the average depth was 8 feet. The width at the top at the widest part was 70 feet. It was cut through the bends of
2823 the old channel at the most advantageous points, and many points where it could it would strike from one point in the river and follow the channel perhaps 20 to 30 rods in a general way, coincide with the old channel.

During the 10 or 12 years in which we have been operating there have been 40 or 50 drainage systems cut into the Kankakee River. In this reclamation project that we are speaking of there were a great many laterals put in, I think between 20 and 30. They were mostly 20 feet in width and 5 feet in depth, in addition to which there are drainage ditches and laterals.

2824 The Robbins Ditch is 14 miles in length, about 20 feet in width to 40 feet in width, 8 feet deep. In places there were tile used in connection with the laterals.

The next stage of the river development was that each district in the neighborhood vied with the other to get dredged ditches in as rapidly as possible, so we had six or eight dredges at a time for several years. The reclamation work was finished in 1906. About 46 miles of the river channel was deepened and straightened out altogether.

2825 I know the larger portion of the ditches which enter the river; commencing at the northern end I will give you their length, width and estimated flow. We commenced with the work at the Baltimore & Ohio Railroad about four miles south of South Bend and extended to 19 miles. The average width was 30 to 35 feet and seven to eight feet in depth. Then the Place ditch which I have described. The Robbins ditch was 14 miles in length, 30 to 40 feet in width and the flow was three or four miles an hour.

2826 The Bliss ditch was five miles long, 18 feet wide, five feet deep and flowed three miles an hour.

The Hamlet ditch was six miles in length, 20 feet wide and six feet deep and flowed three miles an hour.

The Jaine ditch was six miles in length, 18 feet wide, five feet deep and flowed three miles an hour.

The Long ditch, five miles in length, 18 feet wide, five feet deep and flowed about three miles an hour.

The Whittem ditch was about seven miles in length, 20 feet wide, six feet deep and flowed four miles an hour.

The Salisbury ditch was five miles long, 20 feet wide, six feet deep and flowed three miles an hour.

The Hanna ditch was 10 miles long, 20 feet wide, five feet deep and flowed three miles an hour.

The Davidson ditch, 12 miles long, 20 feet wide, six feet deep and flowed three miles an hour.

The Box ditch eight miles long, 20 feet wide, 12 feet deep, flowed two miles an hour.

The McLaughlin ditch 15 miles long, 20 feet wide, five feet deep and flowed two miles an hour.

The Bergland ditch four miles long, 20 feet wide, four feet deep and flowed two miles an hour.

The Hayville ditch two miles long, 20 feet wide, five feet deep and flowed two miles an hour.

2827 The Myers ditch five miles long, 20 feet wide, five feet deep with a two-mile flow.

The Tuesberg Land Company ditch, six miles long, 20 feet wide, five to six feet in depth and about a two mile flow.

The Neuston ditch, five miles long, 18 feet wide, and five feet deep, with about a two-mile flow.

The Larimore ditch, six miles long, 20 feet wide and six feet deep, flowed two miles an hour.

The Yellow River is from 30 to 40 feet in width. It has about four feet fall to the mile.

The Williams ditch is about 14 miles long, six feet deep and 25 feet wide, with a flow of four miles.

The Jordan ditch four miles long, 20 feet wide and five feet deep and flows four miles.

2828 The Elsby ditch is 14 miles long, 20 feet wide, six feet deep and about four miles flow.

The Mockler ditch 12 miles long, 30 feet wide, and 10 feet deep, with three miles flow.

The Wanata ditch, eight miles in length, 20 feet wide and six feet deep with about a three-mile flow.

Hog Creek ditch, 10 miles long, 20 feet wide, six feet deep and about four miles flow. Some of that territory has a six or seven mile flow, so it makes it a greater current.

Haskell's ditch is 10 miles long, 20 feet wide, six feet deep and about 10 miles flow.

Reeve's ditch is 12 miles long, 25 feet wide, and six feet deep with about three miles flow.

The Lyon's ditch 4 miles long, 16 feet wide, 5 feet deep and about 2 miles flow.

The Cook ditch, 10 miles in length, 30 feet wide, six feet deep and about three miles flow.

The Cook Arm three miles long, 20 feet wide, six feet deep and about a four-mile flow. That has a ten-foot fall in three miles.

Crooked Creek, 14 miles long, 20 feet wide, six feet deep and four miles flow.

2829 Befogle ditch, 10 miles long, 18 feet wide, five feet deep and three miles flow.

The Whitfield ditch, 12 miles long, 20 feet wide, five feet deep and two miles flow.

The Hodge ditch, 10 miles long, 25 feet in width, six feet deep and about two miles flow.

The Otis Arm ditch, 12 miles long, 18 feet wide, five feet deep and about two miles flow.

The Moffett ditch, 12 miles long, 18 feet wide, five feet deep and about two miles flow.

The Singleton ditch, 16 miles long, 30 feet wide, six feet deep and two miles flow.

The Brown ditch, 13 miles long, 25 feet wide, six feet deep and two miles flow.

The Ackerman ditch, seven miles long, 18 feet wide, five feet deep and two miles flow.

The Sherron ditch, six miles long, 18 feet wide, five feet deep and three miles flow.

Then there are 17 miles of the river work known as the Reclamation Company's ditch. That was the river proper. These are the principal ditches.

2830 The total length of these ditches is over 400 miles extending on either side of the river. I have not named all of them. There are a great many more that have been made since, in the last three or four years, many of them, whose length would aggregate 75 to 100 miles and whose width is from 25 to 30 feet.

2831 In addition to the million acres of the Kankakee River watershed there has been about 400,000 acres of the Yellow River watershed throughout Indiana reclaimed. The water passing through these ditches gets away very rap-

2832 idly now in the new channel of the river. It goes down in the Kankakee River.

Of my own knowledge I know the Kankakee River empties near Wilmington, just below Wilmington, into the Illinois River. I was familiar with the Illinois River

2833 before the reclamation project was carried into effect below that point and have been familiar with it since the drainage proceedings were completed. It is higher now below the point where the reclamation project discharges its flow of water. In the spring the water comes

off very rapidly. It would probably be two or three feet higher. The stream is two or three miles wide in places and in the summer when most of our laterals runs dry
 2834 the rain that is not absorbed or required by the country passes away down the channel into the Kankakee River. Since the reclamation project the Kankakee River carries off more water than it did before.

I am familiar with the point known as the ledge of rock at Momence. I have seen and observed it. I know about the removal of that ledge of rocks. The state of Indiana appropriated \$40,000 for removing it for the benefit of Indiana years ago and the commissioners commenced at the upper end of an island in the river just south of Momence and removed the dam which low-
 2835 ered the water at that point probably five feet, at the high point, the apex of the ledge of rocks there is a seven-foot fall, but these people did not succeed in benefiting the state of Indiana by the removal of that because they commenced too low. The removal of the stone never affected the drainage of Indiana because it was too low down below the high point. The water which flows upon that country is more quickly removed than it was before these drainage operations were commenced, and it is removed six to eight times as fast. It has three times the natural fall and only one-third the distance to go to get to the channel. In times of heavy rainfall the water
 2836 over a large area fills the channel of the Kankakee River, the new channel and the old channel also; takes it into the old chanel and it is held there until it passes down on into the Illinois River. The reservoir at the point where it starts out in time of extreme high water, would be about three or four miles wide, 10 or 11 miles in length and six inches to three feet in depth. It passes over the rock ledge very much more rapidly than it would otherwise. Usually it would stand after a time of high

2837 water in the country for a period of two or three weeks.

The country which I have been speaking about is all personally known to me and the matters testified to have all come under my own observation. All the territory covered by that river project has come under my observation; I have personally seen and observed all of these ditches except possibly a half a dozen. Prior to 1900 there has been no drainage work at all done in this country with the exception of a few ditches which I mentioned. And practically all of this work has been done

2838 since that time.

2839

Cross-Examination by Mr. O'Connor.

I have a notation and paper here. It is simply an estimate in my judgment of the quantity of flow. Down at the mouth of the Kankake River there has been no enlargement at all; the enlargement has been farther back at the upper end.

There is a dam located at the City of Kankakee. The dam may have been raised three feet this year, I don't
2840 know it. There is a dam at Wilmington. That dam was not raised this year so far as I know.

I am able to state, if I know the fall in the territory through which it passes, how fast a stream is flowing. I can form a judgment of it.

I got the figures as to the fall from the levels of the engineers in charge. I know the fall from the north. Much of that territory comes down from five to six feet fall. Of course the water pushes down rapidly. As to the specific information as to the fall, I got that from the engineers that were doing our work. It was work I was supervising and had connection with, helping to put it in. Some of the figures are from work that I did not do personally but it was work I was supervis-

ing. I got the acreage figures from the Government report, also from the engineer's statement, the Govern-
 2842 ment engineer that did the work. My testimony on the question of acreage is not based upon information which I secured myself.

I have testified in a similar case within a month at Princeton; twice within six weeks. I am not here in answer to a subpoena. I am only receiving my expenses from the Sanitary District and whatever they see fit to give me for my time. I am not under pay as a salaried person or anything of that kind. There has been no arrangement for my time or what they would pay for my time.

2843 The drainage system that I have talked about lowered the water level of the land about five feet. It takes quite a heavy rain to show a little water in the ditches because the ground is dried out. It would have to be a pretty heavy rain to show very much after the spring rains when the ground is full of water. In the summer time, during the farming season, the drains are practically dry.

The Kankakee River was not dry over the rock ledge at Momence this year but it was so you could see a
 2844 ripple and there was probably a foot of water. It was very low for this stage. It was about 100 feet in width. I have seen the Kankakee River during the summer time at Wilmington since this drainage system was put in, and the river there is so dry you could see the round stones all over the bottom of the river.

2845 *Re-direct Examination by Mr. Chipfield.*

In the spring when the ground is full of water the ditches fill up and sometimes overflow in the low places for a time, but the water is carried off into the old river bed and the new channel goes away very rapidly.

Re-Cross Examination by Mr. O'Connor.

After the ground is full of water in the spring the ground is full of water. Now the water that goes into the ditch when the ground is full of water would overflow if there was no ditch there, and would find its way into the Kankakee River.

2846 *Re-re-direct Examination by Mr. Chipperfield.*

I do not mean to say it would find its way into the Kankakee just the same as though no ditch was there. It would find its way into the Kankakee River more slowly. It would not have found its way to the Kankakee River from the 750,000 acres of marsh land; it would stay in that territory.

W. H. BENTLEY, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is W. H. Bentley; I reside in Pontiac, Illinois, Livingston County, since 1867. I am overseeing some lands in Livingston County; haven't any other business. Have been a farmer nearly all my life. I know the little and big Vermillion Rivers. The Vermillion River flows right through our town. Pontiac is there on the map; with reference to the figure "1294" it appears just below and to the right. The Big Vermillion River runs I think through the town and the Little Vermillion branches off up here. The Little Vermillion comes into the Big Vermillion. I know the Big Vermillion for 50 miles.

The Iroquois River also flows in that part of the state. It is east of us.

During the last three or four years there has been a large dredged ditch started in the Iroquois County near LaHogue running in a northeasterly direction and then turning to a northwesterly direction through a part of Fort County and down through Livingston County and coming into the Vermillion River below Wing, Illinois.

2849 When they constructed that Vermillion River up near the head, it was very crooked and grown up with willows. It was a flat, swampy country there and they had a dredge boat in there and they dredged that out and straightened the river and took those willows and everything out. There was about 40 to 50,000 acres of low, swampy country where it was overflowed in times of high water at that place in the eastern part of Livingston and the western part of Ford County. The land before it was reclaimed was only good for short crops if we had a very favorable year and a great deal of it not then. In the wetter years the water would stand over nearly all of it all summer in some places.

2850 In the construction work they dredged a ditch there in the neighborhood of 25 miles long, 20 to 25 feet wide with an average depth of seven feet and about an eight-foot bottom. They constructed some laterals from this ditch. Before this construction in the Vermillion country the water that fell in times of heavy rain would just soak away and gradually go away by evaporation and some of it of course would go down the slough as it was then. Since the construction the water goes into the
2851 ditch immediately and into the Vermillion River. The Vermillion River empties into the Illinois River near La Salle, Illinois.

Where these swamps were before this work was done the land is all farms now, all under cultivation. The work was all done and completed in 1910. The water that falls in that country is now carried off very much

more rapidly than before. Before the ditch was made and the river dredged the water would stand practically all summer. Now it don't stay. They farm the land now. That is true throughout the entire length of the territory that I have mentioned.

In the last 10 or 12 years there has been a great difference in the use of tile drains within Livingston County, nearly every township. Up to about six years ago, during the last 10 or 12 years there was a great deal of tiling done in our county. All the outlets were in small open ditches, only a few of course would go to the larger streams, but in the last six or seven years they have been putting large tile in these open ditches, say from 16 to 22-inch tiling and connecting the branch ditches up with them and making a new complete system of the whole thing, nearly all over our county. And they have deepened the tiling in the county and have reduced the water level from one to two or three feet. It carries off the surplus water very rapidly and in large volumes, and the flow is continuous during all the time when there is wet weather in the country. The water goes into the Vermillion River and its tributaries. The Vermillion River in wet times rises much more rapidly than it did in former years and stays up longer. We have more water now that gets into the river than there used to be. This has been true during the last six to eight years.

Cross-Examination by Mr. O'Connor.

The water is now being carried into the Vermillion by these ditches that flow that way in the state of nature. The ditches that were put in there, the lay of the land is that way.

2855 C. J. HOBBS, a witness for the defendant, being sworn,
testifies as follows:

Direct Examination by Mr. Chipperfield.

2856 My name is C. J. Hobbs. I reside at Kersey, Indiana,
in Jasper County, 18 miles from Rensselaer, the county
seat. I am a civil engineer and surveyor and have been
for 11 years, during which time I have given my atten-
tion to drainage engineering.

I have been associated with B. J. Gifford, a gentleman
who formerly resided at Kankakee, and who owned a
large amount of land in Indiana, and who also owned
a short line of railroad called the Chicago & Wabash
2857 Valley. I have been engaged in the reclamation work
11 years in reclaiming Indiana lands by ditches, dredg-
ing and tiling. I have been connected with Mr. Gifford's
lands. They are located in Jasper and Lake Counties,
Indiana. In Jasper County they are northeast of Rens-
selaer, the southeast corner of Lake County.

2858 The Iroquois River has its source partially in Jasper
County, practically all of it, and empties into Kankakee
a few miles east of Kankakee. I know the Iroquois
2859 River from its source down to about eight miles from
the Illinois state line. I am acquainted with that por-
tion of the Kankakee River which runs through or be-
tween Jasper and Porter Counties and between Lake and
Jasper and Lake and Newton Counties. I have surveyed
generally in this country for 14 years. I am familiar
2860 with the drainage operations that have been conducted.
They consist of dredged ditches, tiling, some ditching
done with teams and open ditches. The dredged ditches
are located in Jasper, Porter and Lake Counties. Some
of them I laid out and measured.

The first ditch I laid out was one of Mr. Gifford's

ditches, his main outlet in fact. It was partially built before I was employed there. We lowered the bottom of it about four feet and cleaned it out for about five miles down there and cleaned it out to a uniform fall of a foot and a half a mile. The ditch commences in the center of Mr. Gifford's lands and runs southwest towards the Iroquois River. It is five miles long. We built a new ditch in connection with it and parallel to it. These ditches drained 30 or 35,000 acres. Before the ditches were completed the lands were covered with an average of a foot to a foot and a half of water in the spring and during the freshets it was probably higher; possibly may be a little lower than that in dry season. These ditches were constructed within the last fifteen years, and the ditch was deepened between 1902 and 1903.

Connected with the 35,000 acres of land there was about 150 miles of dredged ditches. The last ditch constructed was constructed about two years ago. There is a ditch in the north part of the county running into the Kankakee River. They carry water from the higher land down to the Kankakee River. There is approximately 6,000 or 8,000 acres. Before the ditch was constructed it was usually wet land, not much grown on it but wild hay and some places the water stood on the land. The dredged ditch would be about 35 feet in width at the top and six or seven feet deep. They were mostly constructed during the last six or seven years.

In Lake and Porter Counties, about 10,000 acres have been drained.

I know a ditch by the name of the R. E. Davis ditch. That ditch starts in the east part of Jasper County and runs northwest towards the river about eight miles of main ditch and about eight miles of laterals. It drains about 1,000 acres.

I know a ditch called the Akers ditch located just west of the Davis ditch. It is about six miles long, 30 feet wide at the surface and six or seven feet deep and drains about eight sections of land.

I know the Smith ditch located west of the Akers ditch. It runs south into Jasper and starts about eight miles south of Whitfield and then empties into what is known as the Hodge ditch, which empties into the river. The 2866 Smith ditch is about 12 miles long, averages about 35 feet wide and is six or seven feet deep.

The Tanner ditch is located east of DeMott in Jasper County. It is about eight miles long, 30 feet wide and four feet deep, I think; six or seven sections of land 2867 are drained by this ditch.

I know the Tyler ditch.

2868 The Delahanty ditch starts southwest of Wheatfield, about three miles and runs north and then northwest and empties into the Hanna ditch. It drains about five or six sections.

The Evers ditch rises about two miles south of DeMott and empties into the Morris ditch. It is a ditch that parallels the river and crosses part of the river and empties into the river. It drains six sections.

The Dreuth ditch is located on the marsh and crosses part of the river. I don't think it drains into any of these ditches that had been dug.

The Moffet ditch rises southwest of Winamac, Indiana, and flows nearly to Lake Village and then empties into 2869 the river. It drains about 10,000 acres. It is about 18 miles long, 40 feet wide and seven feet deep.

All of these ditches have been constructed since I have been associated with Mr. Gifford in this work.

In the Beaver Lake District about 10,000 acres were drained by drainage operations there. Since the recla- 2870 mation work land which was practically worthless or

seemed to be worthless for farming, has been farmed to a great extent. It has not been entirely reclaimed. I expect 20 per cent. of the land is tilled and the tiling empties into the drainage ditches, the dredged ditches.

2871 In Lake County there was the Brown and McWilliams levee. It extends from a point on the river marsh three miles south of Hedron, Indiana, to the state line. It was constructed for the purpose of keeping the flood water from the Kankakee River running out over the low land. The levee is 20 or 25 miles long. The McWilliams levee is about 10 miles long. They have the effect of tending to raise the water in the Kankakee River a little higher.

I knew the Kankakee River and the Iroquois River before these levees were constructed. The drainage systems and construction of levees and other works which I have mentioned has caused the water from the Iroquois River every year to run over the rock. It used
2872 to be in dry seasons that there was but very little water that would run over, but now there is a continuous stream running down this stream all the time since it has been straightened and deepened. Ordinary times it would be two feet deep, I guess, and about 40 feet wide at the bottom.

The Kankakee River east and north of Jasper County was high. Since the water has been going down there it seems to have more current than it did at that time. Ordinarily the stage of current is about $2\frac{1}{2}$ to 3 miles an
2873 hour. Before it did not seem to have any current at all. And the Iroquois River before these operations seemed to have no current; it has got a current now, I think of 5 or 6 miles an hour in places. Some places it is a little greater. I expect at Renssalaer it goes 8 or 10 miles an hour.

Before these drainage districts were constructed the water used to lay on the marsh until it evaporated or

soaked into the soil. Now it practically all goes into the ditches, runs off more rapidly than before. Since the construction of the drainage work, these streams rise more rapidly, especially the Iroquois. There seems to
 2874 be much more water passing, it runs much swifter. When I first came to the Kankakee River, or in that vicinity the river would many times be down below the banks, but it has not been since the operation of the dredging has been going on above. They carry more water than formerly.

2875 *Cross-Examination by Mr. Butters.*

They apparently carry more water than formerly. The water runs much swifter when the water is high and the river does not seem to get as low as it did in former times. I have not seen it higher in my time. I have kept a sort of a record of the water in a way as to the height it has been at different times, and at a time before the Lake County levees were built the water was not as high as it has been since. Now prior to that time I don't know much about it.

2876 When the Kankakee River is high it goes through faster, that is because there is a vast area or territory, all of which goes into the Kankakee River and the river has its level depending upon the streams that flowed into it at that time. The drainage has not tended to decrease the level of the water.

2877 Mr. Gifford's land is about seven miles from the Iroquois and there was no connection between the land and
 2878 the Iroquois before we put in the ditch at that point. The excess water went in a different way, which Mr. Gifford drained. It went into the Iroquois River. Now the entire amount of water would practically go in that would fall. The ground takes care of some of it.

2879 Mr. Gifford's main ditch has not ceased running, I

don't think in five years. It has been running for five years or more. I don't think there would be just as much water before that ditch was put in going into the Iroquois River as it does now in the case of a spring freshet. Now there is a small lateral ditch to carry the water into the main ditch and before it lay on the ground in these low places where there is little ponds and one place and another. It was not a little amount of water, it was the whole country. I do not claim that the tile ditch makes any more water.

2880 The land is all practically level; the water won't run off without there is a ditch. Before the tile ditch will start to run the land must be saturated with water; the water must come into the ditch. It don't stop running when the ground above will be wet. The earth retains a certain quantity of moisture. If there is a slope to the ground it runs on top of the ground, depending on the soil and the slope.

2881 I have not seen the Kankakee River except between Momence and the Illinois in the last four or five years, or examined the flow of the water before 1900 at any season of the year. There was water running down there before 1900.

2882 J. W. KENNEDY, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is J. W. Kennedy, I reside at Watseka, Illinois. I have been a farmer all my life.

I have been a commissioner of a drainage district called number two Martindon. I know the location of a stream called Pike Creek. I know the drainage operations that have been conducted along this creek. The

2883 ditch is 8 feet deep, 32 feet to 33 feet wide on an average

and is about 12 miles long. There are between 17 and 20,000 acres drained by it. Our ditch empties into number 3 drainage and number 3 empties into the Iroquois. Number 3 is located about two miles north of our ditch. I could not say how long it is. It is a big district. I suppose they have got 25 or 30 miles. I cannot say exactly how much land is drained by that district. I think it is as big again as our district, may be more.

Before this 20,000 acres I speak of was drained the land was pretty wet. It stood in places until it dried up. It had a natural discharge but it was not good. Part of the land was farmed before that. Since the ditch was dug it is a great deal better. The water went quicker and eventually discharged into the Iroquois River.

2885 The sub-soil is mainly clay. The water would not soak into the clay.

After the construction of the ditch the water ran off a good deal quicker. The water in the Iroquois River rises a good deal quicker than it used to in flood times. It takes longer to get away. They took out a dam at Sugar Island which, I guess, did some good in the Iroquois River. It helped to let the water away a little faster. In times of flood the water in the ditch is from four to six feet. The ditch enters the Iroquois River west of Wilmington. There is dredging all over the country there now. In this district we put in something like 15 or 20 miles of tile from eight inches up to 30
2887 inches. It has been universally used throughout the districts.

Cross-Examination by Mr. O'Connor.

That opened up the natural drain but the water did not all go through in a state of nature. It would not all pass out of the land. It is the way the water would flow. The drain that is put in is the same system that has been

going on in different parts of the country. It takes the
 2888 water off a little faster in the spring. The Illinois rises
 quicker than it used to. The water in the Iroquois will
 come up faster in view of the fact the drainage will carry
 the water quicker to the river than it did formerly. The
 current I presume flows faster, I don't know. I think so.
 I would think so if there was more water there.

After the spring freshets have been actually drained
 out of the land the river I presume goes back after a
 little while to its old level but not the level that was main-
 tained prior to the construction of these drainage sys-
 tems.

2889 In the early days the river went almost dry, but it
 never does any more. There is more water in the Iro-
 quois River in the summer months all the time. I could
 not say how much. I haven't much familiarity with the
 Kankakee at Wilmington or Momence.

2890 GRANT RIGGS, a witness for the defendant, being sworn,
 testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Grant Riggs, I live in Romeo Township,
 Kankakee County; engaged in the business of farming
 and drainage. I have been engaged in the business of
 drainage engineering for 29 years. I have done some
 of the engineering work on the drainage districts.

There is a stream in our county known as Claussen's
 Creek, upon which there has been drainage work done.
 2891 The stream was dredged out six years ago for about
 seven miles; there are three branches. Before it was
 dredged the land on either side was wet, so wet they
 could hardly farm it at all. The water stood on it. The
 seven miles of construction work includes the laterals

and into the laterals a tiling system has been instituted.

Claussen's Creek empties into Spring Creek, which, in turn, empties into the Kankakee River.

There is a creek in that vicinity known as Minnum, about four miles from Claussen's. Drainage operations 2892 on that creek. It was cleaned out and deepened, I should say, for a distance of four miles. I could not tell the acreage that was definitely drained by this improvement.

I know of drainage operations in the vicinity of Snake and Gar Creeks. Gar Creek has been in a drainage system I think for 28 years, but they are working on it yet, cleaning it and extending it. It was partly deepened and dredged last year. They are working on it yet.

Snake Creek is one of the drainage districts that is west and the other is east of me. Snake Creek was a new drainage district. It was dredged out entirely about 2893 four years ago. I know of the drainage districts drains and improvements that have been made in the vicinity of Chebanse, I should say 10 to 15,000 acres have been affected by it. Since the drainage operations of which I speak have been carried on, the excess of water goes into the river. Some of it into the Iroquois and some of it into the Kankakee. It eventually goes into the Kankakee. It is discharged a great deal quicker in times of freshets.

2894 The Kankakee and Iroquois Rivers get a good deal higher at times than they did before and carry more water apparently than they did. The drainage operations I speak of are conducted in Kankakee County in the southeastern part, on the south side. I own the land where the Iroquois empties into the Kankakee and by reason of my residence have had an opportunity to observe both of those streams.

Tile is used for drainage purposes more extensively

during the last six or eight years. Twice as many tile used. They cannot get tilers enough there; they are advertising for them and there are tiling operations being conducted generally throughout the county. The land which has been reclaimed during the last eight years is used for farm land. Formerly the water stood on it.

No cross-examination.

1896 THOMAS HALORAN, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Thomas Haloran, I live at Ottawa, La Salle County. I formerly resided in Ford County. I know the township known as Wallace Township in La Salle County. The soil in La Salle County is a black soil with a clay sub-soil. Up to eight or ten years ago it was pretty wet. I have been engaged in the business of tiling in La Salle County. During the last twelve years
 2897 I have put in from 20 to 30 miles of tile, mostly through Wallace, Waltham and Freedom. Most places I have taken up tile and reset them and others have tiled out thoroughly. It has made considerable change with reference to the wetness of the land. About 30 per cent.
 2898 more is thoroughly drained than ten years ago. The land I tiled discharges into the Illinois and Fox Rivers.

I had similar experience in Ford County, but the last ten years of my experience has been confined to La Salle
 2899 and Woodford Counties. I know that tiling operations have made some difference in the Fox River, probably five per cent. difference. I am still engaged in the work. The tiles latterly which is used is much larger, we used to use threes and fours and now we use eights and tens.

Cross-Examination by Mr. O'Connor.

On the land I tiled around here I never ran a tile directly into the Fox River. I have noticed a difference in the Fox River in the spring. I cannot name a single time when I noticed a difference, but using my judgment about the drains that I know of, that would make a difference. The Fox River in the summer does not have a great deal of water in it. Not a great deal of water drains into the Fox through the tile in the summer. I could not say how many tiles drain into the Fox River. I put in some myself. I know there is an awful lot of tiling done up there in the north. In the spring the high water has been carried off faster than it used to. I have no basis upon which I can state the amount of water that goes into the Fox River. It appears to me that the Fox River is held up higher than it used to be. I know that some years ago it was a difficult matter to get from the Fox River out into the Illinois; since that time the water is higher at times. I could not say whether it backs up into the Fox River but the drainage might have had some effect in raising it, too. If the water is higher it would naturally have to back from the Illinois into the Fox River. That is the condition today.

According to my notion the draining by the farmers made a perceptible increase in the flow of the Fox River. I would put it at about five per cent., five per cent. more water in the last eight or ten years than previous to that. I come to the conclusion from the greater draining that it drained out than before. They have made more thorough draining. I don't know how much water there was in the Fox River. I am figuring there would be quite a bit go into it on account of the drain tile. I judge it to be five per cent., basing my judgment on the amount of draining, the amount of tiling, better tiling.

To the best of my judgment I saw five per cent. My judgment is based on the tiling that was put in. There were some big ponds, you might call them, and they drained several of them. When they were drained off they stayed off. Of course, big rains would come and they would carry the water to the river naturally. There have been some of these drained off quite a number of years ago, through tile. They wasn't much good. I took out one ditch up there that came down, a 15-inch tile drain at a place called White Horse Pond. I re-set it. Something was wrong with the drain and I fixed it up. That is one place that I worked on which would affect the flow in the Illinois River. I don't know how much water there was in the river that went into it on account of the drains. I just figured the same as if I had a big tile in there, it would make a difference in the tile. I could pretty near tell by figuring the capacity of the tile, the only basis I would have to work on.

I am not in the employ of the Sanitary District. I was subpoenaed. I don't know what they are paying me. I don't know whether they are paying me anything or not.

2909 GEORGE W. GRAHAM, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is George W. Graham, I reside at Streator; I am in the grain business and have been engaged in the business of farming. I know about the use of tile in La Salle County the last eight or ten years as to whether it has been increased. It has been very much. I am familiar with the southeastern part of La Salle County, 2910 Bruce, Otter Creek and Farm Ridge Townships. I think

it has been increased 40 per cent. probably in the last ten years. They are all putting in larger tile and a great many small tile are being taken out. A great many have not taken them out, they are ignoring them and running alongside with larger tile. There has been about eight carloads of from 12 to 16 inch tile unloaded at Richards 2911 this fall. That is where I am in the grain business. During the last six or eight years the farmers have been putting in large tile, from eights up to twelves mostly. And the land that is already tiled they are running new laterals with four-inch tile and they are putting those about ten rods apart.

There is a big change in the surface of the county in my vicinity with reference to water being removed by the use of tile in the last eight or ten years. The change is for the better by putting in large tile and draining out these mud holes. The point of discharge for these tiles in Wolf Creek and Otter Creek, and they in turn discharge into the Vermillion which discharges into the Illinois River.

2912 The condition which I have described with reference to the use of tile in my portion of the county, is general throughout the county.

Cross-Examination by Mr. O'Connor.

Not putting in tile to dry out my land. Put the tile down generally about four feet; sometimes you have to go eight or ten feet in order to get over a knoll. They put in 4-inch tile as close as three feet to four feet. It is a general movement on the part of the farmers to better their lands and has been going on for twenty years.

2913 *Re-direct Examination by Mr. Chipperfield.*

Within the last ten years it has very much increased.

Adjournment to Tuesday, November 26, 1912.

2914 November 26, 1912, 10:00 A. M.

Court met pursuant to adjournment.

WILLIAM POWRIE, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is William Powrie. I live in Waukesha, Wisconsin, business civil engineer. I have been engaged in drainage operations. I am acquainted with the watershed of the Illinois River as it lies in Wisconsin. I am familiar with drainage operations in and about Racine, Waukesha and Walworth Counties in Wisconsin. I have
2915 been connected with them.

I know a drainage district called the Wind Lake Drainage District. It is called the Norway and Dover Drainage District now. The Wind Lake Canal starts from Muskego Lake, a lake a mile and a quarter north of the county line between Waukesha and Racine Counties and goes through into the next section south of that which is called Wind Lake. Then it flows down where it comes into the Fox River at Rochester, Racine County. Then it flows around down where it comes into the Fox River at Rochester. About three miles out from Rochester there is another branch that is about two miles farther east, two and a half miles, that runs up along here and touches the edge of the watershed and the county line of Waukesha County, as shown on the map marked Exhibit 25.

2916 I am familiar with the counties lying down through—I take it this is Kenosha. I have conducted drainage all through this part of it here, laying west of Racine, clear over to Burlington and then west of Burlington to Elk Horn and Delevan, Wisconsin, as appears on the map.

The canal in connection with this drainage district was first commenced in 1890 to be utilized. A Chicago Company dug the canal from Rochester to the north end
2917 of Muskego deeper, about five feet clear through; started in '92 and completed in '93. I am not positive as to the time. The canal came out of Muskego Lake, was 18 feet on the bottom and the one that went down into the Fox River was 25 feet on the bottom. Originally it was four feet deep at Wind Lake and they practically dug or deepened it five feet more, making nine feet when they got through. I think it was completed in '93.

Before that the surface of the country was covered
2918 with water to a large extent. There are about 11,000 acres drained by these operations. The outlet of this drainage canal is into the Fox River at Rochester. The discharge of this ditch in 1906 was on April 2nd, 217 cubic feet a second, which would be 13,000 cubic feet a minute. When the drainage is completed the total watershed is about 50,000 acres.

2919 There is an old mill about 3,000 feet below the point of discharge in the Fox River. It is operated with the water that comes from the drainage canal and also from the Fox River. The Fox River below the dam measures 123 feet wide.

In 1908 we took gaugings and on May 17th, there was 83,280 cubic feet a minute going over the dam. The extreme high water.

In Racine County there have been drainage operations. I know a ditch known as the Dover Town Ditch. It was laid out by the town to drain about a thousand acres of

land, which emptied into Eagle Creek, which also dis-
 2920 charges into the Fox River about two miles below Roch-
 ester. It was constructed in 1906.

I know a ditch known as the Hoozier Creek District. That is a recent district. I don't know whether it is entirely completed or not, but it was in operation. The creek ran down there and drained the land in a slipshod way and then they organized this district two years ago to drain that out. The project will drain about 10,000 acres altogether.

There is another drainage district called the Turtle
 2921 Creek Drainage District in Walworth County. The watershed contains 20,000 acres. The discharge of the Turtle Creek District is estimated at about 245 cubic feet a second which would be 14,000 cubic feet a minute.

I know a district called the East Troy District, but had no connection with it. I know of the project although I was not connected with it. I know it is a very large marsh, but the number of acres I do not know.

2922 In the Hoozier Creek District I do not know what the discharge from the outlet is. I think it is ten feet deep at the outlet.

In a general way prior to the putting in operation of these districts, the land was overflowed most of the time. Some of it was adjacent to marshes and they were affected by the water standing back from the marshes, and in that Norway Marsh it is almost entirely wet land. The rain that well on that country would run off to a certain extent before the ditches were constructed and the rest of it would lay there and be evaporated by the sun. Since the construction of these ditches they are planting corn and potatoes in the land along the Norway Ditch. The surplus water now escapes and I think it goes in a more uniform manner than it did before the
 2923 drainage. If the ground is frozen now I think it will

discharge faster; if the ground is not frozen, not saturated it will discharge slower because with the drainage the sub-soil is drained down, we will say, about two feet and that permits taking up quite a rainfall before you have any run off. In times of heavy rains, of course, it increases the run-off very much. The last two or three seasons with reference to rainfall in Wisconsin were wet springs and summers and from June on were very dry until perhaps along in September. This year it was wet during all the spring and then dry. During 2924 the times of rains in the early parts of the year, the ditches are full of water and they flow into the Fox River.

I have seen the Fox River and observed it. I have observed a more uniform stage of water down there. The Fox River is high the year around and certainly carries more water since these drainage operations. With reference to its standing higher, the seasons have been so variable there that you would hav to fix your question to a particular time. Now, a year ago, it was so dry there was very little water flowing there during the year, a year ago in the late summer. But in the 1925 early spring the water was quite high, much higher than usual. I think the water is higher in extreme high water due to more opportunity to run off. Laterals have been constructed over all of these districts.

2926 I think there will be 50 miles of laterals, something like that in the Norway and Dover District all told.

There was a ditch dug out of Camp Lake in 1906 which 2927 was closed in 1910. I never estimated the amount of discharge but it had about a ten-foot fall in two miles and it measured nine feet wide on top.

Cross-Examination by Mr. O'Connor.

The first district I spoke of was originally completed in 1890 and there were afterwards improvements added

about 1893. The object was to take the water out of the land.

I said if it was frozen the water would run off faster 2928 than it would before, if the ground was frozen. I have seen an inch of rainfall on the ground and no run-off when it was real dry.

Summer before last the Fox River was very dry, the summer of 1911. I did not see it in September. I never knew it to be dry down there. I said during the dry 2929 times not much run-off at that time. In the summer of 1911, all of the rivers were low, and the high land adjoining the marsh was effected. It prevented the drainage of the high land.

The high land around Muskoge Lake is very little higher than the marsh or lake level; until they drained it down they couldn't drain the land.

The water level of the land would be some higher, of course, than the water level of the water surrounding the 2930 land. It depends on the character of the soil. You can run back from the lake a couple of miles and the ground might be three or four feet higher and still be wet. If you would want to put in a ditch that would lower the water in that land, say three feet, you could not do it if the water was up in the lake. The higher the water stands around the land, the higher the water level is going to be in the land. The farther back you go from 2931 the water level the less drainage there would be and the farther back you go the higher the water would be standing on the land itself.

Re-direct Examination by Mr. Chipperfield.

In a porous and loose soil the water would not stand 2932 very high in that kind of soil. When the soil is loose and porous of course the water is more nearly uniform.

I am talking about the water in the land itself, that is naturally found there.

The Rochester Dam on the Fox River is 250 feet wide. Just below I measured it at 123. I cannot tell exactly 2033 how far above Rochester the river rises. The head waters are between Waukesha and Washington Counties, something like 30 miles. I think about 1,000 square miles of watershed of the Fox River lies in Wisconsin.

Re-cross Examination by Mr. O'Connor.

It always lay there, probably will.

2934 I took the gauge readings because we contemplated removing the dam in our new improvements. We ran up against so much trouble and the Supreme Court had decided that we could not remove the dam in some other cases, so we wanted to devise some means of going on with our undertaking, and we took a set of gauge readings to determine the flow and to give us an idea how large to construct our channel and how much to enlarge it; 1908, I took those gauge readings. The other measurements I made by measuring the velocity of the water in the channel and computing the discharge by the velocity.

The Dover Ditch was a town ditch and drained about 1,000 acres. That is my estimate of the land at the time 2039 we did the work. I did the work. No acreage given that is based upon records that I saw.

J. R. KING, a witness called by defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is J. R. King, I reside in Winchester, Scott County, Illinois. I am county clerk of the county. There

are drainage districts located there. I have been over them. There is one called the Big Swan, Hill View, Mauvaise Terre, Scott County, and one called Coon Rod. I can point to the districts which are shown on Exhibit 2937 26. There are three of them marked on the exhibit, Scott County, Big Swan and Hill View. They are in Scott County right below Naples. The North District in that territory is Mauvaise Terre. It is about six or seven miles south of the north line of Scott County.

2938 The next district is Big Swan.

The next district is Hill View.

The next district is North Star.

In Mauvaise Terre, there are 1,874 acres.

In the Scott County District there are 9,467 acres.

In the Hill View there are 14,350 acres.

2939 In the Coon Rod District nearly 2,000 acres.

The river side of these districts is in some places a quarter of a mile from the river, other places probably half a mile from the river. Prior to their construction the Illinois River overflowed all these districts. They have all been constructed between 1903 and 1907. Before their construction the Illinois River was at high water from four to six miles wide. The banks of some of these levees are 20 feet, some 25. In times of high water at 2940 the present time the Illinois River is probably a mile wide.

Across the river from these districts there are high bluffs, 20 to 60 feet high. The plat so far as Scott County is concerned, correctly outlines the location of these districts, all except the Hill View District, a part of which is in Scott County.

Cross-Examination by Mr. O'Connor.

I have been county clerk ten years. I have been over 2941 this ground myself at different times. The Big Swan

Drainage District I have been over. I have been over the upper part of the Hill View.

As I remember the Big Swan was constructed in 1904. I had no connection with it except officially.

In the Hill View District there were 14,000 acres. I got those figures, a part of them, off the record and a part of them from the clerk of Green County. They
2942 are not my own figures. The other figures are copied off the assessment roll of the Drainage District in my office. I had nothing to do with the operations and determining the acreage. I copied them from my record.

Winchester is 30 miles south of Beardstown, ten miles from the Illinois River. I don't know how far Winches-
2943 ter is from La Salle. I would say Winchester is 70 miles from the mouth of the Illinois River. I don't know how far it is from the Campsville Dam or the Henry Dam. I don't know how far Winchester is from Peoria.

2944 JACOB A. HARMON, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipfield.

My name is Jacob A. Harmon, I reside in Peoria. I am a civil engineer largely devoted to drainage. I am familiar with the location of the drainage districts along the Illinois River.

Starting at Hennepin the locations and names of the various drainage districts that are found, proceeding down the river, are as follows:

Near Hennepin there is a district, the official title of which I don't know. I know it as the Hennepin District.

Next below is the Partridge District, opposite Chilli-cothe.

Opposite Peoria is the East Peoria District.

Opposite Pekin is the Pekin and LaMarsh District.

Below Pekin in Tazewell County on the east and south side of the river is the Spring Lake District.

Across from the river and the Spring Lake District is the Banner District.

At Havanna is the Lacey District.

Immediately below the Lacey District is the Langilier District.

Just below the Lacey District is a small district back from the river front, the name of which I do not know.

Opposite Beardstown is the Coal Creek District.

Immediately below the Coal Creek District is the Crane Creek District.

Above Beardstown on the north side of the river is a new district, the name of which I do not know.

Opposite Meridosia is the McGee Creek District.

A little below Meridosia is the Meridosia District.

2946 Beginning at Naples on the east side of the river and extending within 8 or 10 miles of the mouth are a series of districts which adjoin each other. The first one of these districts beginning at Naples is the Scott County District; the next is the Big Swan, then the Hill View, then the Hartwell, then the Keetch, then the Eldred and then the Nutwood District. That carries you down to the Mississippi River.

2947 The total area of acreage drained by these districts is approximately 100,000 acres. The levees are built from 200 to 400 feet back from the river, some places a little closer.

I have been connected with about half of these districts
2948 in an engineering capacity. Most of these districts have been constructed within the last ten years, since 1902 high waters, but some of them were constructed prior to that time and have been re-constructed since. All but one of them, I think, that were constructed before 1902, broke at that flood. The levees are about 12 feet in height above the natural bank.

The river varies in width from about three miles at Peoria to about four miles at Havanna in high water. 2949 At Beardstown three miles. Meridosia a little wider, three or four miles. The average is the same from Beardstown down. There is some local variation.

The map marked Defendant's Exhibit 26, approximately shows the location of the drainage districts which I have spoken of and in a way the locations on the plat are substantially correct. The distance shown on the plat is substantially correct, according to my own observation and knowledge of the location of the county lines.

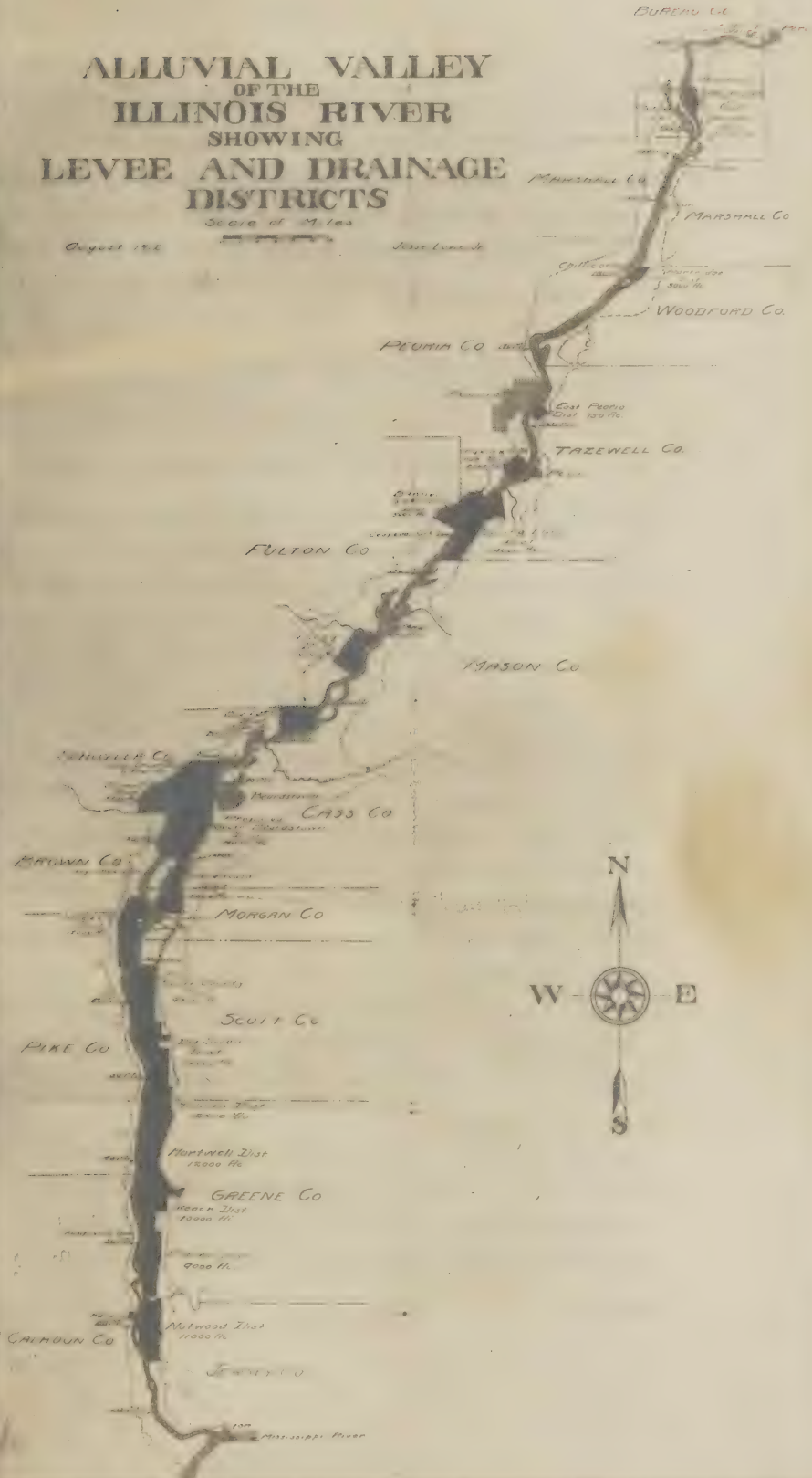
2950 Mr. CHIPERFIELD: I want to offer this plat in evidence and that concludes the examination of Mr. Harmon on this subject.

2951 Which said plat was marked Exhibit "26", and is in the words and figures following, to-wit:

ALLUVIAL VALLEY OF THE ILLINOIS RIVER SHOWING LEVEE AND DRAINAGE DISTRICTS

Scale of Miles

August 1912



The figures on here "210" mean 210 miles from the Mississippi River and all the way down that is the same. They represent the distances by 10-mile intervals.

Winchester is in Scott County, about opposite the line between the Scott County District and the Big Swan District. That would be about 60 miles from the Mississippi.

2953 LOUIS S. ALTER, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Louis S. Alter. I reside near Goodland, Jasper County, Indiana. I am a surveyor and civil engineer. I am in a general way familiar with the drainage operations conducted in my section of the country. The drainage along the Kankakee consists mostly of large open ditches generally constructed with a dredge. We
2954 call them dredged ditches. There is probably 100 square miles of Jasper County drained by dredged ditches and probably the same in Newton County. I knew the country before these operations were commenced. In Jasper and Newton Counties before the drainage operations, it was a level flat country covered with water from a few inches up to $2\frac{1}{2}$ or 3 feet deep. On these marshes there was growing grasses and rushes, cane and water-docks.

I also have some acquaintance with St. Joe County. There are extensive operations conducted in that county. There was as much land drained as in Jasper and Newton Counties.

2955 The surface of the land before these drainage operations were commenced was mostly swampy, either tamarack or open swamps, some cranberry swamps huckleberry swamps, covered that way from a few inches up to two or three feet deep.

Before the drainage operations were completed the water of these three counties would in dry times, a large portion of it, run off, but in wet times it would lay there until it would evaporate or be soaked up. St. Joe County encloses the head waters of the Kankakee River, is nearly square and the west half and the south part is drained by the Kankakee and Yellow Rivers, the Yellow River being a tributary of the Kankakee.

2956 Newton County is about 14 miles wide, extends from the Kankakee River south about 28 miles in a straight line.

Jasper County joins it on the east and extends from the Kankakee River. It is south of Newton County. It is 36 miles long and 18 miles wide.

I was very well acquainted with the Kankakee River but not so very well with the Yellow River. The Kankakee River as it existed before any improvement of the stream was made consisted of a rather narrow shallow channel with a wide marsh on one or both sides of it, generally rather narrow on one side of the channel, and very wide, extending back three or four, or sometimes five miles on the other side. The channel is shallow and very crooked and at places the trees would fall in and
2957 would reach almost across the channel. The channel was from 60 to 140 feet wide. The land which I speak of as being swampy before these ditches were constructed, since they were constructed the water has been mostly removed and a large portion of those marshes have been drained sufficiently for farm lands. The water which falls on these lands in the shape of rain or snow now goes off a great deal faster and more of it is removed from the land.

Tile is pretty extensively used now, but before the time of the improvements very little tile was used and that was on the high ground only.

2958 To some extent since the improvements I have observed the Kankakee River and compared its condition before drainage operations and after it was put into effect. The Kankakee River probably reaches a little higher stage of water a little quicker than it did before. To the best of my observation there is considerably more water passes down a given point near the state line than there was before.

In times of excessive rainfall the ditches, so far as they have an outlet, flow rapidly and carry the water
2959 off much more quickly than they did before. Before the drainage operations the water simply flowed over the land to the river. There were old ditches that were constructed on the higher ground and that simply ran out and struck the marsh, ran out the ditch on the ground and quit. It discharged into the marshes for a mile or two miles to three miles away from the channel of the river. That water could get to the river by simply soaking through the grass and over the country, that is the only way it had of getting there.

Most of the river improvements and the drainage operations have been constructed within the last six or eight years. I have lived in that vicinity 61 years.

2960 The tile takes more water off the country, but it distributes it out a little longer. It lessens the flood of water in the smaller streams, but has a tendency to increase the flood of water in the larger streams. For instance, the creek that goes through my place formerly would get high and remain at a high stage of water for three or four hours and then fall rapidly. Now, it doesn't get so high, but it maintains that height for four or five times as long, and that has a tendency in the larger streams where it empties, of raising them up higher continuously at a moderately high stage for a longer time. There certainly has been more water discharged from

the surface of the country than was formerly carried off, since the construction of this work.

2961 I have been engaged in the business of engineering and surveying for 34 years and have conducted surveys in this country of which I have spoken, for 33 years. So far as this improvement is concerned, I mean the entire watershed of the Kankakee River is affected. I do not know what its area is, but practically the entire water-
2962 shed has come under my observation.

Similar drainage operations as those which I have described in St. Joe, Newton and Jasper Counties have been carried on over the entire watershed and that condition is substantially true of all the watershed of the Kankakee in Indiana.

Cross-Examination by Mr. O'Connor.

The watershed that I refer to has always been the watershed of the Kankakee River and always will be so
2963 far as I know.

Prior to the improvement mostly timber was growing in the marshes. The grass that grew where the water was shallow, near the edge of the water. In dry times
2964 there was no water and it gave the grass a chance to grow. For agricultural purposes the land was practically valueless before the installation of the drainage, but they used it for hay. They cultivated some of the
2965 high land. I don't know what proportion but there was considerable. They cultivated none of the land that was very wet.

I have only carried my observations of the Kankakee River to the Indiana line. I did some work at Momence when they were taking out the rock there.

2966 W. E. MILLER, a witness for the defendant, being sworn,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is W. E. Miller, I reside at Libertyville, Illinois. I am a farmer located in Lake County. I have to do with the organization of drainage districts in Lake County. I have lived there since 1871. I know every foot of Lake County.

The drainage districts that have been organized in
2967 Lake County in the last eight or ten years are the Vernon District, Vernon No. 2, Seavey Slough District, Big Sag Ditch. In the Vernon District there are about 8,000 acres. There is only six miles of ditch; the ditch is 23 feet wide on top, and 6 feet deep. The Vernon District lies along the east side of the Desplaines River.

2968 The Seavey Slough commences about a mile south of the Village of Libertyville, and comes down into Indian Creek.

Vernon District No. 2 commences south of Indian Creek and runs down into this little creek shown on the map.

The Big Sag lays right up in there.

Libertyville is about 15 miles from the north line of Illinois. The Big Sag District is about 10 miles from the state line. The district to the south is 36 miles south of the state line, and about eight miles from Lake Michigan.
2969 gan. The nearest one to Lake Michigan is about 14 miles.

The soil of the Vernon District before any drainage was done was a black mucky soil. There was water standing on it in times of heavy rains all the way from three to four feet deep. As a result of these drainage operations that is changed, it is now in a high state of cultivation.

The outlet of the Vernon District discharges into the Desplaines River. There are tile laterals connected with the main ditch. There were no tiles used in this slough 2970 before then. They are using from 6 to 8-inch tile.

Vernon District No. 2 drains about 9,000 acres, I mean the ditch, the watershed would be about 9,000 acres into that ditch from watershed to watershed. It goes through a low flat swampy country, the same kind of surface as described in the Vernon District. It is tillable land at the present time. It discharges into the Desplaines River through a little creek.

2971 The Seavey District drains about 12,000 acres. There is around five miles of ditch, which is 23 feet wide and 7 feet deep. On two farms in the Seavey Slough District there are 12 miles of tile. I should say in the whole territory there is in the whole neighborhood of 25 miles of tile, 6, 8 and 10-inch tile. The Seavey Slough District discharges into Indian Creek and into the Desplaines River.

2972 The Big Sag District drains about 20,000 acres. There are seven miles of main ditch and there are tile laterals. The ditch is 6 feet wide and 7 or 8 feet deep. It discharges into the Fox River.

There are drainage districts opening in Fox and Long Lakes. It is about 4 miles; they dug a channel there about 30 feet wide and 6 or 7 feet deep. There is in the 2973 neighborhood of 25 miles of dredged ditches put in through the swamps around Long Lake and Fox Lake. Before these ditch laterals were put in it was a regular swamp, water on it the year around, practically. A person could not walk on it except in some places. I should say 15 to 20,000 acres were drained by those operations.

2974 The water from the drainage eventually gets into the Fox River.

The head waters of the Desplaines originate in Keno-

sha County, a very little bit runs up into the edge of McHenry County, but not much.

There was a big marsh located in and about the head waters of the Desplaines River. I could not say how many acres there are in it. I should say there was in the neighborhood of 6 or 7 square miles. There is more than seven sections of land in there. There was drainage operations carried along the head waters of the Desplaines by what is called plow ditches. By that I mean a big
2975 plow that is drawn by a capstan which digs a ditch 6 feet wide and 4 feet deep and rolls the dirt out and throws it out about 3 or 4 feet from the bank of the ditch. It is called a bull plow ditch. In Lake County we have about 150 miles of these ditches. They empty into the Desplaines River and several of them into small lakes which drain into either the Desplaines or the Fox River.

I know the eastern edge of McHenry County. There are swamps located there which have been drained into
2976 the Fox River. The biggest part of them were drained by these plow ditches. There is one dredged ditch put in there about nine or ten years ago. All of these operations have been put into effect during the last ten years.

I know the Desplaines River and the Fox River since the fall of '71. Before the construction of these operations the Fox River in the northern portion of Lake County was real high and would keep the water back in the sloughs until a time when the dam at McHenry went out, and also down below; it was about six miles farther down, another dam used for a grist mill. Those old dams went out and then the lake got down so low that they went to McHenry and put in another dam just south of McHenry village, about three feet high. That raised the water about a foot or foot and a half in Fox Lake.

2977 In its original condition the width of the river was

about 200 or maybe 300 feet wide. In extreme dry times before these drainage operations it would be very low.

The Desplaines River as a rule is a low sluggish river in our county. During times I have stepped across the channel and not got my feet wet walking across. In places in dry times it would be two rods in deep holes and then in other places it would not be three feet. Since the drainage operations have been completed, the Desplaines River in its lowest places has water at least two feet deep, in the shallowest places in the river since that time, and all the way from three to four or five rods across. The Desplaines River carries more water since. The Fox River carries more water since. The water from the sloughs and surrounding country gets into the rivers quicker and faster than it did before. The rain falling on the country is carried off by the tiles to the ditches and by the ditches to the river.

- 2979 I have some pictures which I now show you. The first picture which is marked No. 1 with the name H. L. Haymer, I recognize, and the place that the photograph purports to be a reproduction of. That picture was taken in Vernon District No. 1, after a rain in the spring and shows the condition of the lands. The photograph truly,
- 2980 faithfully and correctly reproduces the scene which then and there existed. The water that is displayed in the picture lies along the land on the line of that ditch we put in there and the depth of the water in the picture is in the neighborhood of a foot or a foot and a half. The strip of land that is seen is about thirty to forty rods
- 2981 wide and about ninety rods long. The date the picture was taken is April 30, 1900. I was there when the picture was taken and saw it taken. That is the things reproduced by the picture. It truly, accurately and correctly portrays the conditions that then and there existed as known to me.

Mr. CHIPERFIELD: I desire to offer this picture in evidence as illustrative of the scene which there existed.

Objection by plaintiff; objection overruled.

Whereupon said photograph was received in evidence by the court and marked Exhibit 27.

2982 I recognize the picture which is marked No. 2, H. L. Haymer. I was there when that picture was taken and am familiar with the scene which that picture pretends to reproduce. The picture truly, accurately and correctly reproduces the scene which there existed. The depth of the water shown in that picture is from a foot to three feet, and the place that is purported to be reproduced by the picture is thirty rods wide and it narrows down. The picture is a true representation of the scene that existed on that day and at the time it was taken.

Mr. CHIPERFIELD: I desire to offer No. 2.

Mr. O'CONOR: Same objection.

2983-4 Objection overruled.

Whereupon said photographs marked Exhibits 27 and 28, respectively, are admitted in evidence, and are as follows:



27 Vernon district.



28 Vernon district.

2985 Now the picture which is marked No. 3, H. L. Haymer, I know. It was taken April 30, 1909, on the same day. I was present at the time the picture was taken. The picture truly, faithfully, accurately and correctly reproduces the scene which there existed. The water portrayed in the picture is a foot or a foot and a half deep. The scene represented is a strip of water about twenty rods wide. It is a true, accurate and correct representation of the thing as it then existed at that time.

Mr. CHIPERFIELD: I desire to offer the picture in evidence.

Mr. O'CONOR: Same objection.

Objection overruled.

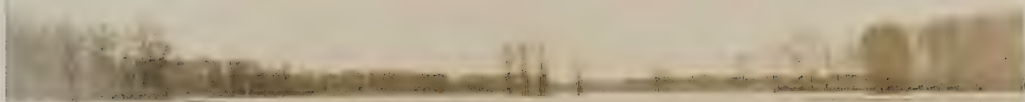
2986 The picture marked No. 4 was taken on the same day, April 30, 1909. It is a true, accurate and correct reproduction of the scene there sought to be presented, which was presented at the time. I was present. The water that is shown there is a part of this picture—we took a boat and went out and measured the water and it was four feet deep. This picture does not show the width of the water clear across. As produced here it is about 100 rods wide. The scene is in the Seavey Slough District. The other three pictures are in the Vernon District. We took the pictures of both districts on the same day. The water shown in these pictures is being carried off through these ditches. The condition of overflow shown in the Vernon District extended over the entire
2987 length of it. The condition which is reproduced in No. 4, there was about four miles of it.

2988-89 Mr. CHIPERFIELD: I desire to offer the picture in evidence.

Mr. O'CONOR: Same objection.

Objection overruled.

Which said photographs, marked Exhibits 29 and 30, respectively, are in words and figures following:



No. 4.

30 Seavey slough district.



No. 3.

29 Vernon district.

2990 *Cross-Examination by Mr. O'Connor.*

The photographs show unusual conditions in the spring, but there was water in that marsh all the year
2991 around more or less. The natural water-shed was in the same direction that the water is now carried in the ditches.

A. C. MORRISON, a witness for the defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is A. C. Morrison, I reside in Martinton,
2992 Iroquois County, Illinois. I am a drainage contractor. Martinton is located in the north center of Iroquois County. It is almost due north of Watseka. It is south
2993 and some east of Kankakee and almost due west of Rensselaer and is 6 miles from the Iroquois River.

The principal smaller streams located closer to us are the Beaver Creek and Pike Creek. Beaver Creek starts over in Indiana and runs in a westerly direction and empties into the Iroquois River.

2994 I have been a drainage commissioner for 22 years of Martinton Drainage District No. 3. There is 60,000 acres drained by it. There are 36 miles of open ditches in No. 3. They are scraper and dredge ditches. From these
2995 ditches there are laterals. The main ditch runs 30 feet wide and 7 feet deep and empties into the Iroquois River direct. In Martinton No. 1 there are 6,000 acres, 6 miles in ditches, and it empties into the Iroquois River. Its ditches are 20 feet wide and 5.5 feet deep.

2996 Martinton No. 2 drains 20,000 acres, 12 miles of ditches 30 feet wide and 8 feet deep and empties into the Iroquois River.

No. 3 has 23,000 acres in it, 36 miles of ditches, 30 feet wide, 7 feet deep and empties into the Iroquois River.

No. 4 has 3,500 acres, 6 miles of ditches, 25 feet wide and 5 feet deep, and empties into the Iroquois River.

Papineau & Martinton No. 1, 6,000 acres, 5 miles of ditches, 25 feet wide and 5 feet deep, and empties into the Iroquois River.

The Big Beaver has 8,000 acres, 8 miles of ditches, 30 feet wide and 6 feet deep and empties into the Iroquois River.

Little Beaver has 4 miles of ditches, 6,000 acres, the ditches are 25 feet wide and 25 feet deep, and empties into Beaver Creek.

Beaver No. 1 has 6,000 acres, 12 miles of ditches, 30 feet wide and 5.5 feet deep and empties into Martinton No. 3.

2997 Beaver No. 2 has 5,500 acres, 18 miles of ditches 30 feet wide and 6 feet deep and empties into Martinton No. 3.

Wichard Drainage District, 8,000 acres, 6 miles of ditches, 25 feet wide and 6 feet deep, and empties into the Kankakee River.

Concord & Sheldon, 10,000 acres, 9 miles of ditches 30 feet wide and 7 feet deep and empties into the Iroquois River.

Blackstone Drainage District has 7,000 acres, 4 miles of ditches 25 feet wide and 6 feet deep and empties into the Iroquois River.

Middleport & Martinton has 12,000 acres, 10 miles of ditches 25 feet wide and 6 feet deep and empties into the Iroquois River.

Crescent & Iroquois has 8,000 acres, 5 miles of ditches 25 feet wide and 6 feet deep, and empties into Spring Creek, which flows into the Iroquois River.

Iroquois & Crescent No. 2 has 4,000 acres, 8 miles of ditches 30 feet wide and 5.5 feet deep, and empties into Sugar Creek.

LaHogue Drainage District has 17,000 acres, 22 miles of ditches 28 feet wide and 5.5 feet deep and empties into the Vermillion River.

2998 Oliver Drainage District in Livingston County has 12,000 acres, 14 miles of ditches 25 feet wide and 7 feet deep and empties into the Vermillion.

Danforth & Ashkum Drainage District has 22,000 acres, 20 miles of ditches 30 feet wide and 6 feet deep and empties into the Iroquois River.

Ashkum No. 1 has 10,000 acres, 5 miles of ditches 22 feet wide and 5 feet deep, and empties into the Iroquois River.

Possum Trot Drainage District has 17,000 acres, 12 miles of ditches 25 feet wide and 7 feet deep and empties into Sugar Creek, which empties into the Iroquois River.

Artesia No. 4 has 6,000 acres, 7 miles of ditches 25 feet wide and 5.5 feet deep, and empties into Spring Creek, which empties into the Iroquois River.

Milk's Grove Drainage District has 6,000 acres, 20 miles of ditches 30 feet wide and 10 feet deep on the average, and empties into Langham's Creek, which empties into the Iroquois River.

Crescent Drainage District No. 1 has 4,000 acres, 5 miles of ditches 30 feet wide and 10 feet deep and empties into Spring Creek.

2999 Ash Grove Mutual has 8,000 acres, 7 miles of ditches 25 feet wide and 7 feet deep and empties into Sugar Creek, which empties into the Iroquois River.

Middleport No. 1 has 8,000 acres, 7 miles of ditches 25 feet wide and 5 feet deep and empties into the Iroquois River.

Milford & Ash Grove, 12,000 acres, 6 miles of ditches

20 feet wide and 6 feet deep, and empties into Sugar Creek.

That makes a total of 255,000 *acres drained and a total length of ditches of 274 miles.*

3000 I am personally familiar with the land composing the drainage districts, a list of which I have given. They have all been constructed in the last ten or eleven years. Before the construction the surface of the land in the districts was low and wet. They were only farming the

3001 highest lands. The water would just simply stand in the low parts at various depths, some 5 or even 6 feet in depth. Since the construction of these districts the surface of the land is all farmed. It is carried off in tile through these drainage districts. There has been thousands of miles of tile put in since the construction in these districts. Very little tile before the districts were constructed. I think there are very close to 300,000 acres

3002 drained by the 57 drainage districts in Iroquois County. All of these districts discharge into the Iroquois River.

Before the completion of these districts the Iroquois River was fordable at low water times at at least three different places in our county.

3003 The sub-soil under most of these lands varies from lake sand, in some places, to joint clay, blue clay, and hard pan. Where there is hard pan and blue clay the water does not sink into the ground, but to some extent it can sink through the joint clay. Where there is blue clay and hard pan it stays on top.

Since the construction of these districts we have been unable to ford the Iroquois River. The water is higher
3004 I think at least two feet. The river carries more water and there is always more current in it. It is a faster stream than it used to be.

I know something about the drainage operations in Kankakee County. From Kankakee up the river there

has been quite a number of districts constructed during the last eight or ten years. They drain into the Kankakee. Before the ditches were constructed that was a big swamp, probably a hundred thousand acres. There was water standing in the swamp nearly all the year through.

3005 It was not so awful deep, it was more of a level low piece of ground. There were no farming operations in the swamps. At the edge of the swamps they did a little farming. Improvements have been made in the last ten years, since which the land that I speak of is cultivated, most of it. Some of it isn't good enough to cultivate. The water now leaves the surface more rapidly than it used to.

3006 The tiles are running the year through. The ditches are running.

I believe I have some pictures of the typical changes in the condition of the country before and after the drainage.

(Photographs handed to the reporter and marked Exhibits 31, 32, 33 and 34 for identification.)

3007 Exhibit 31 is an old ditch, where the dredgers have been run up there. It shows the deepening of an old ditch. That was done in Martinton No. 3, I think, about four years ago, along in August, and it correctly portrays the conditions that are presented, to my personal knowledge.

Exhibit 32 is a photograph of the same locality. I was there at the time it was taken, but the conditions are changed from those shown in the other exhibit. It truly,
3008 correctly, accurately portrays the scene there presented. The body of water in Exhibit 32 is from eight to ten feet deep and from 32 to 34 feet wide; 32 was taken a couple or three months after 31. It was before the completion of the whole ditch, but at that point it had
3009 been completed.

Mr. CHIPERFIELD: I desire, if your Honor please, to offer in evidence Exhibits 31 and 32.

Objection by plaintiff; objection overruled.

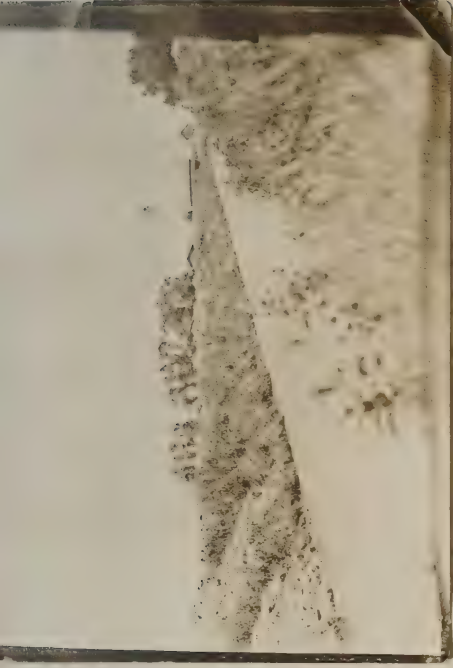
Which said documents were thereupon marked Defendant's Exhibits 31 and 32, respectively, and are in words and figures as follows:

3010 Exhibit 31.

3011 Exhibit 32.



31 Dredged ditch 3 miles from Marlinton.



32 Same as 31 2 or 3 months later - dredged.

3012 Exhibit 33 is the same ditch only in a different position and represents another section of the field, truly, correctly and accurately. I was present at the time it was taken.

Exhibit 34 is the same ditch, not exactly the same point. It is farther down the stream, half a mile farther. The water shown in the picture is about 10 feet
3013 deep. The width of the ditch is between 30 and 40 feet and is one of the ditches I testified about that drains that district. It is Martinton Number 3, and was made the same time in September and correctly shows the scene there presented.

Mr. CHIPERFIELD: I desire to offer Exhibits 33 and 34 in evidence.

Objection by plaintiff; objection overruled.

Thereupon said documents were so marked and are in the words and figures following:

3014 Exhibits 33 and 34.

Looking north in front of bridge. Ruins & left on remains of ditch others are top of old waste bank



33 Dredged ditch in Martinton district #3.



34 Same as 33 several months later - redredged.



3015 I have lived in that neighborhood about 37 years but during the 24 or 25 years I have been a drainage contractor and have constructed 30 per cent. of the work in the districts I have testified to.

I am acquainted with the Oliver Ditch in Livingston County. It is a large ditch that was constructed to carry water from the south side of the T. P. & W. Railroad. It lies south of Chatsworth and runs in a northerly and westerly direction into the Vermillion River. It drains
3016 about 10,000 or 12,000 acres. Was constructed about seven years ago. After heavy rains on these lands it goes into the ditches and then into the outlets and of course to the river.

Cross-Examination by Mr. O'Connor.

The water I speak of in Iroquois County is carried along in the natural water shed.

3017 THOMAS ROWE, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipfield.

My name is Thomas Rowe. I live in Essex, Kankakee County. I am connected with the Essex and Kankakee Drainage District in the Town of Essex and Kankakee County and the Town of Ritchie, Will County. The district contains 3,300 acres partly in Will and partly in
3018 Kankakee Counties.

When they commenced operations the territory consisted of ridges and sloughs. Two-thirds or better of the property was covered with water all the way from two inches to two feet. We constructed five miles and a half of ditches with a 12-foot finish and increased or diminished as we went up one foot to the mile. The water

stood on the land from the first of November until the first of July. The land is perfectly dry now. The ditch 3019 was completed July 20th last. The outlet is Horse Creek, which empties into the Kankakee River. According to the season sometimes Horse Creek will rise ten to twelve feet in a day.

3020 The district ditches are very nearly full; sometimes they overflow. No water on the land where the ditches 3021 have been constructed.

There are other districts that I know of. One is in the Township of Pilot in Kankakee. Possibly 10,000 to 15,000 3022 acres drained by it. Since the improvement the water comes quicker in wet times. The stream carries it quicker.

There is another district in the Township of Sumner on the eastern part of Kankakee County. The ditches 3023 are about four miles long, ten to twelve feet wide on the bottom. It drains nearly a whole township. The ditch is used for the tile as laterals. In every one of the districts there is used a great deal of tile. Some of the districts have as high as 200 carloads of tile from 18 inches to 10 inches. The tile certainly drains it very much quicker than if it had to soak through the land.

3024 I don't think there was a drainage district in Kankakee County twelve years ago. I know all of the country north of the City of Kankakee clear to the county line. A few years ago it was nearly all covered with water. Since that time they have dug private ditches and put in tile. Every acre of that country you mentioned has got tile and it has nine-tenths of it been done in the last twelve years. This section of country out past the asylum farm was not capable of being cultivated before it was tiled. Two-thirds of the county has been changed by tiling. The water discharges into the Kankakee River.

3025 Since these operations the Kankakee River seems to

have washed out a great deal and got deeper and wider. The effect is that there is more water in the wet times
 3026 and less water in dry times in the river. The greatest quantity goes towards the river in the spring when the frost is going out and the snow is melting, that cannot go through the tile, and in carrying the water off now it takes days where it used to take weeks.

3027 *Cross-Examination by Mr. O'Connor.*

The water always comes to the Kankakee but it would take longer. It had to go there, there was no other way to get away. In dry times the Kankakee is lower than it was before. There isn't as much water in it now as formerly. In olden times the lands were wet and when the rain came it overflowed.

3028 WARREN W. LEACH, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Warren W. Leach. I reside in Rushville, Schuyler County, Illinois. I have lived there 52 years.
 3029 During that length of time I have been thoroughly familiar with the Illinois River. Have been boating on the river all my life since I was 13 years old.

I am acquainted with the drainage districts located in Schuyler County. There are two completed districts and one that is formed but the work is not any more than commenced. The completed districts are the Coal Creek District and the Crane District. The Coal Creek District embraces 6,711 acres and the Crane District 5,094 acres. I spread the assessments on all of them. Coal Creek District is about four miles long; Crane Creek District is something like a mile or a little better.

The walls of the levees would be ten or twelve and I think fourteen feet in some places. They stand back from the river close to 100 yards. Before the levees
 3031 were constructed the Illinois flowed out of its channel and across and came up over the bank and went over the surrounding districts in times of high water, all over the low ground. It flowed over the ground that is now occupied by these districts. It stood in the neighborhood of a mile or a mile and a half wide and it would run on the other side of the river from four to six miles in width. The river was anywhere from five miles to several more
 3032 in width. Very nearly seven miles or a little more in width before the construction of the levee district and it would occupy the entire bottom. Since they have completed them they are a success and have shut the water out of there.

The district now being constructed is the Big Lake Drainage and Levee District.

The Coal Creek District was constructed between 1895
 3033 and 1900. I don't remember the year it was finished.

3034 *Cross-Examination by Mr. O'Connor.*

Those I speak of were completed some time about 1900. I don't know how far down the river we are from Henry or how far from Grafton at the mouth of the river.

Coal Creek District is practically right west of Beardstown.

3035 GEORGE T. DOWSE, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is George T. Dowse. I reside in Lockport and have lived there 54 years. My business is dredging, steam shovel work.

I have been acquainted with the Desplaines River above the point where the Sanitary District channel flows in all my life. The Desplaines River before the Sanitary District channel empties in lies west of the Sanitary District channel above Joliet at the upper basin, down on the east side of the old canal and on down the line. It runs all the way from 500 feet to a mile at places from the Sanitary Canal. Before the Sanitary District channel was constructed the Desplaines River in dry seasons of the year was very shallow; in wet seasons the same as this it was very high. The condition of the Desplaines River above the point where the Sanitary District canal enters it in the last eight or ten years would probably be a foot deep, from that to two feet. Most of the time a stream of water has been flowing in the Desplaines River.

I know where the Sanitary District canal empties into the Desplaines River.

3037 I have seen the Bear Trap Dam two or three times a year. I often go there. When I have seen the Bear Trap Dam I should judge there was about a foot of water flowing over the dam. It empties into the Desplaines River at Lockport. The Desplaines River at the point where the Sanitary District canal empties into it carries all the water that is naturally found in the Desplaines River. After the Sanitary District water enters the Desplaines River it runs south down to and by the coke ovens of the new gas plant in Joliet into what is called the upper basin at the Robey street bridge. Running down from the upper basin over the Jackson street dam and on down through in this direction.

3038 The Sanitary Canal and the Desplaines River come in together into the old canal at the upper basin at Joliet. The Desplaines River does not run into the Sanitary Canal anywhere. The Sanitary Canal runs into the Desplaines River.

In the upper basin at Joliet, the stream is about 400 feet wide below the Jackson Street Dam on down all the way up to 250 feet, maybe wider. I don't know exactly.

3039 The Bear Trap Dam at Lockport is 160 feet wide. Where the water goes through Joliet the banks of the stream are not built up with any permanent work except on the east side of the river at the Sanitary Canal where there are walls of concrete and clay. Where the river is confined by these walls at Ninth street, it is about 400 feet wide. It varies from 200 to 500 feet. The narrow

3040 points between Sixteenth and Ninth streets in Lockport and from Sixteenth street down to the E. J. & E. bridge is a very wide part. From the E. J. & E. bridge down to the Robey street bridge it is narrow. At that point the Desplaines River flowing all of the water that is found in the river naturally and all of the water that comes from the Sanitary Canal is not over two feet deep.

At Ninth street I should judge the current is running at the rate of three miles an hour. At these narrow points where the river is narrowed down to 200 feet,

3041 the water is two or two and one-half feet, I should judge, and flowing at the rate of three miles an hour, which carries all the water of every kind that comes from the Sanitary District. Where the river spreads out and is from 500 to 1,000 feet wide it would range in depth from two feet to six inches deep. I should think taking it in its deepest part it is flowing probably two and one-half or three miles an hour; in the shallow part about three to three and one-third miles an hour.

There is no water that is discharged by the Sanitary District at Lockport that is not carried in that stream in that way. That condition that I have described has not changed during all the time that the Sanitary District channel has been operated.

3042 I know Hickory Creek and Spring Creek. Under ordinary conditions Hickory Creek is a very fierce little
 3043 stream. Spring Creek is southeast four or five miles below where the Sanitary District water enters the Desplaines River. Hickory Creek also enters the Desplaines River below the place where the Sanitary District water comes in, something like two and one-half miles. Neither Hickory or Spring Creek are fed in any way by waters from the Sanitary District.

3044 Six or seven years ago we had quite a freshet on Hickory and Spring Creeks. At that time both creeks were overflowed and ran over the Rock Island tracks east of Joliet, down over Eastern avenue and Jefferson street and at that time there were two or three lives lost. Down through that part of the city Hickory and Spring Creeks made a stream a mile wide.

Right along on Chicago street and on Jefferson street
 3045 there was about eighteen inches of water. They are a little lower streets than other portions of the city. Where the people were drowned the stream got so deep that they could go around in boats and did go around in boats getting the people out of the houses. That condition continued probably twelve hours or such a matter.

Spring and Hickory Creeks run back east quite a ways into the country. I think Hickory Creek runs back in the Calumet region. I have known floods like this to occur twice. The last one was after the Sanitary District channel was opened. The Sanitary District did not add any water to that creek.

3046 I am acquainted with the Illinois River and have been since 1880. I have been engaged in dredging at La Salle, Henry, Copperas Creek and Peoria. I have had about fifteen years dredging experience on the Illinois River. I knew it before the Sanitary District channel was opened and had an opportunity to see and observe the stages of the Illinois River since.

3047 I think since the Sanitary District was opened as compared with the stages before the Sanitary District was turned into the Desplaines River, there is probably eight to twelve inches difference. I have seen the Kankakee above the point where the Sanitary District waters and the Desplaines enter it. You can see it for a couple of miles. I have seen it at a point below where the Illinois River is formed. Where the two streams connect the river always looked a little wider and deeper than other places on it. With the exception of being a little wider and somewhat deeper, there is no difference.

I should judge probably the Illinois River below the junction of the Desplaines and Kankakee was 500 feet, maybe a little wider. I have seen it when at lots of places you could see the rock since the Sanitary District channel was opened.

When I say there has been a difference of eight to twelve inches in the stage of water, I refer to the low water.

3049

Cross-Examination by Mr. O'Connor.

I am not in the employ of the Sanitary District, have never been in their employ, have never done any work for them. I was a witness for them once in Chicago, not in the same kind of a case, about seven or eight years ago.

I was never engaged to do any work for them at Lockport. I never took any measurements of the water there but just read the gauge there sometimes when I would be there. I have read the gauge at Lockport when a foot of water was going over the dam. I haven't any judgment as to the number of cubic feet flowing over the dam. I could not say as to whether I ever saw more than one foot of water flowing over the dam at Lockport. I saw the dam last summer. It might have been July or August. I looked at the dam to see how much water

3051 was going over. There might have been a foot or more, I don't exactly know.

I cannot say when I saw the dam before. I would go over there two or three times a year; somebody would come to Lockport and we would walk over to see the controlling works. Just take our friends along, did not go to make any notations of the flow.

There is an opening there other than the dam where they run their power with. It is on the south end of the dam. I cannot say this summer whether it was in July, August or September. It might have been May. I can't recollect who was visiting me. It was on Sunday. It was between Labor Day and the Fourth of July.

3053 My judgment as to the width of the dam is based upon what I heard the builders say in 1893 or 1894. I do not know that I am unable to figure cubic feet. I don't know how fast the water would flow over the dam.

3054 It was going a good deal faster than it was coming down the Desplaines River.

I have seen the dam when there was a foot of water flowing over it; also seen the Desplaines River when there was a foot of water flowing in it. I could not say how much more water was going over the dam per minute than was going past a given point in the Desplaines. If there was a foot of water coming over the dam and a foot of water in the Desplaines River there would be more water in the Sanitary Canal. If the water had a chance to spread and was coming three times as fast as the river is flowing there would not be three times as much. The water would spread out to where they were together.

3055 The Desplaines River at Ninth street is 350 to 400 feet wide. I could not say when I have seen the Desplaines River at Ninth street during the dry weather season. I have seen it in the summer time when I would

3056 go across that bridge. I have seen a foot of water there this summer during the summer months. The Desplaines River has run a foot higher during the summer along there than it has been in two years. I have seen the Desplaines all summer, it was a foot deep.

I would not know the amount of water flowing over the Bear Trap Dam if it was two and one-half feet deep or the speed at which it flows.

I know the territory that belongs to the Sanitary District that lies below the dam in the Desplaines Valley there. They own probably three-quarters of a mile wide
3057 for a distance of two miles and a half.

After we get down the river three miles there is a big marsh; the river spreads over the marsh.

3058 I think the Sanitary District has added from the controlling works about a foot where the two streams come together. The water of the Desplaines River flows faster or slower depending upon the season. If it is a dry season there isn't much water running in the Desplaines
3059 River. In dry season the Sanitary District has increased the flow both in quantity and in velocity somewhat; not very much. Probably would put a foot more water in there.

3060 The lowest water I ever saw going over the dam may have been two feet during some of the time. There would be about a foot of water out of the dam. I think in the summer time there is less water flowing over the dam than in the winter time. The government won't
3061 allow them to draw so much water in the summer time as in the winter owing to the shipping in Chicago. The shipping season opens about the 1st of April. I never remember being there in the winter time.

I have not dredged any at La Salle since six years ago this summer. I was dredging at La Salle in September and October six years ago, in the La Salle basin

at the point where the canal runs into the Illinois River, just at the point down below the zinc works. Before that
 3062 I dredged the year previous, in 1905. I was there four different times before 1905, the first time in 1884.

I determined that the river had been raised there, I think, eight to twelve inches in the different times I have been on the river working. In 1894 there was some difference. If we had a little rain up north we would get a little rise in the river. I done work there in 1905 and 1906, or 1906 and 1907. There was a little difference I noticed in 1905 as compared with the year
 3064 1894. There was a little rise. I think it was 1906 and '07; I was there only twice. It was two of the three years, 1905, 1906 or 1907. I got there on the 9th day of September the first year. The water was probably then
 3065 about a foot higher than it would be in real dry seasons. It was over the mitre sill of the lock. I don't know what put it there unless it was the rain. I did not
 3066 make my conclusion that the level of the Illinois River was eight to twelve inches higher than it had been prior to that time at that time. I noticed it at different times prior down the river, down at Henry and Copperas Creek. I would see more water flowing over the dam than when I was first down there in 1897.

In 1897 I put flash boards on the dam at Henry. If I remember rightly, they were twelve or fourteen inches
 3067 high. The last time I was at Henry there were no flash boards on the dam. I should judge there was ten or twelve inches of water going over the dam without any flash boards. We put flash boards on because the water
 3068 was so shallow in the river at those places we dredged out so that the boats could go through. The boats did not go over the dam in 1906 while I was there. They do so every spring. I don't know the gross quantity of water flowed in the Illinois River during any month of

the summer, or how much of that water in the Illinois River comes from the Sanitary District or from other places.

3069 The point I have in mind as a matter of conclusion that leads me to say the river has increased in height from eight to twelve inches in I have noted the dam in dry seasons when I was down there four or five years ago. The water was running over the dam in the month of September when I was there and before in the month of September it was not running over before the Sanitary District water was turned into the river.

3070 The mitre sill that I have formerly referred to is in the bottom of the lock at La Salle, lock 15. It might be about twelve feet below the top of the lock. By the use of the mitre sill is the only way we had of telling about the water. We would go over and look at the gauge and the gauge of that water and we were able to tell the height of the water on the mitre sill, so we could see about the boats going over. The water backed up in this from the river. If the river backed up over this
3071 sill we could tell by that. We would know just about the condition of the water on the mitre sill. That gauge was there to explain to the lock tender what water he had over his mitre sill. It is not true that the condition of the mitre sill depended on the water in the canal from the lock on down to the river, because below there where the stream has come from Joliet it is shallower than up this way.

There is no other spot that I have made a conclusion that the water has increased eight to twelve inches only I had been down on the canal and I heard people at Ottawa and down the river say that the water is higher in the river than before the District turned it in, but I couldn't see it that way. I never could see it, because I never thought the amount of water that went over the
3072 Bear Trap Dam could raise the water that high.

I believe about 200,000 cubic feet of water goes over the dam. I noticed down this way that the river is higher than it used to be. I should say 10 or 12 inches. Here at Ottawa I have a general recollection of what it used to be and I think it is about ten inches higher than it used to be.

3073 I noticed coming down on the train this morning that the Fox River was up a little bit, but you could see the sand piles, coming across the Rock Island you could see the sand ridges. They were on the south side of the Rock Island bridge. The sand piles probably changed every year.

I think I first noticed the river was ten inches higher at Ottawa the first time I came down here after the water
3074 was turned in. That was in 1902. I have been over here on the bridge across the Illinois River on La Salle street. The river looked a little higher. I had no object by which I made measurements or calculations, just looked at it. That is not the way I made all my observations, just by
3075 looking at it, but by the height of the water flowing over the Henry Dam and Copperas Creek. I know the water is from 8 to 12 inches higher in dry seasons going over those two places than it was before the Sanitary District turned the water into the canal. That is going over the dam at Henry or Copperas Creek.

In 1906 or 1907 I noticed the water in La Salle was probably a foot higher. It would not be as high here as it would be at Ottawa. I made the determination at La
3076 Salle in 1906 or 1907 by taking that point from a place down opposite the zinc works where we tied up our boats. I know that was in 1897 before the water was turned in. Then I went back again and I noticed on the crib at the zinc works, I noticed the water was a foot higher than it was when I was there before. It was about the same season of the year.

I don't know the amount of rainfall that had taken place

prior to both observations but it is my conclusion the water had been raised about a foot. It was the same in 1906 as in 1907. It is higher now than it would be in a 3077 drier season. The only thing I can judge it from is where I am working, the Desplaines River is higher than it has been for three years. I have not seen the Illinois River since 1907.

I first knew I was going to testify in this case last Saturday. A man by the name of Delaney called me up and said Mr. Nadelhofer wanted me as a witness down at Ottawa. Mr. Nadelhofer is employed by the Sanitary District. I have not made any observations along here for the purpose of testifying. I do not think the Illinois River was two or three feet higher in 1906 than it was when I last saw it. The last time I saw the river was four years ago. I did not make any calculations at that time.

3079 Q. I am talking now about this one foot calculation you made. Are you willing to be bound by the statement it was one foot or might it not have been two feet or three feet?

Mr. CHIPERFIELD: I object to the part of the question that requires the witness to be bound by the statement. That is on the same line as "Are you willing to swear," and so and so.

The COURT: I think I will overrule the objection.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Why, at the time I was there I would be willing to bind myself it was about a foot, but of course after I went away from there there might have been heavy rains or something that would raise it higher.

There isn't anything else that would raise it besides heavy rains that I know of. I have not observed the trees three or four years ago along the banks of the Illinois

River or whether they are standing out in the water now.
 3080 I did not have any reason to make observation going
 down the river at that time. I did not. Whether or not
 the trees along the bank of the river during the summer
 months are now standing out in the water or whether lots
 of them are dead, I do not know.

3081 JOHN DONOVAN, a witness for the defendant, being
 sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is John Donovan, residence Chicago. I am
 a steamboat captain. I have a contract with the City
 of Chicago. I have been in the boat business all my life.
 I have been boating between Peoria, Pekin, Havanna and
 Chicago and been engaged in the business 23 or 24 years.
 I am now engaged in Chicago running a canal boat.

3082 I am acquainted at Lockport and a little in Joliet, also
 with the Desplaines River. I have lived very close to it
 for a while. I lived in Lockport. I live in Lockport and
 when I ain't working in Chicago. I have known the Des-
 plaines River for 25 years. I know how it used to be in
 times of low water. It was very low.

During the last eight or ten years above where the
 Sanitary District channel comes into the Desplaines
 River, I have observed the Desplaines River with ref-
 erence to the amount of water it carries. It is over the
 bank there sometimes. I believe the Desplaines River
 3083 carries more water in the last eight or ten years than
 it did previously. It does at Lockport where it enters
 into the drainage.

I have seen the controlling works and drainage canal a
 good many times and been acquainted with them since
 the Sanitary District channel was opened, and have seen

the water flowing over the bear trap dam. At times I have seen the water flow over the bear trap dam when it did not appear as if there was more than six or seven inches going over. I have observed it from the bridge running across the channel at that point.

- 3084 From the point where the junction is made by the waters from the Desplaines River and the Sanitary District, the water keeps on going down through the Desplaines River through Joliet. I have seen it in Joliet. In the
 3085 narrow portions in the town the river is about 150 feet wide. There is a concrete wall on one side or both sides. It is not any wider now than it was before the Sanitary District was opened. After the Sanitary District was opened it don't look to me as though there was more than four or five feet of water at that place. There is
 3086 no way for the Sanitary District water to be carried off except through the Desplaines River as it flows through Joliet. The current at that place is about three miles. After that it goes south and finally joins the Kankakee River. Before it reaches the Kankakee River, Spring Creek and Hickory Creek flow into it.

I know Hickory Creek, but I am not very well acquainted
 3087 ed with Spring Creek. I think in 1882 Hickory Creek drowned out everything there. I was going from Chicago to Lockport that morning and we couldn't go up on the C. & A. and we went down to Joliet to get the Rock Island and she went up to Hickory Creek and stopped there. The stream was all over the country there. Covered a block or two where the train was stalled. I could not get to the station at Lockport on account of the water being headed off there at the penitentiary. The water came down through there by the penitentiary.

I have seen Hickory Creek in times of high water once before that. There has been high water in Hickory Creek from time to time during the time I have known it.

3080 I have done boating on the Illinois River and have been up the old canal as close as I could get to it where the Desplaines flows into the Kankakee and forms the Illinois. Since 1900, I have seen where the Desplaines flows into the Kankakee. I have never been able to see any difference. I could see the cattle ford the river just the same, standing out there in the water and walking back and forth since 1900. The stream could not be any
 3089 wider. It would be probably a couple of blocks or maybe 400 feet.

I have boated on the Illinois River as far as Pekin, Peoria, Havanna, Chillicothe and along there and up this way as far as Shippingsport. During the years I was on the Illinois River I had an opportunity to observe the stages of the water before the Sanitary District was opened and had an opportunity to observe the stages of the water since the Sanitary District was opened.

3090 When I navigated the river down there in low water when I would leave La Salle, I used to have landmarks away down to those bridges, I would have marks. The reason I have those landmarks is because it used to give me kind of an idea how close I would have to run for the channel in low water. In low water we had to have those marks. I had them before the Sanitary District run through there and I had them afterwards in low water.

The first time I was down there after it was opened up in July, the only difference I could see was that there was six or seven inches, maybe, in 1901.

3091 Based upon my knowledge of the Illinois River up to the present time in low water, I would say that there is a little difference. I would put it at a foot. In high water you could not get at the difference at all. If it was high water it was done by the rain and such as that. I know the high water on the Illinois River before 1900.

I have seen the water on the Rock Island tracks from Peru, 21-foot rise. I don't believe I have ever seen it as high since.

3092

Cross-Examination by Mr. O'Connor.

I was on the Illinois River last, maybe four years ago this summer, August or September. There was a good fair stage of water. It was not low or high. Since the district was turned in I have noticed just a little difference.

I said the low water you could notice a little difference, about 12 inches. The stream travels faster, more current at the wider places. I don't remember whether 1900 was a dry year. I was in Henry July, 1901, I never took any gauges or measurements in order to ascertain how much of the water that passes was actually natural water and how much of it was Sanitary water. I have never been down at the Bear Trap Dam when there was more than six or seven inches flowing over it. The flow over the Bear Trap Dam was much faster than the Desplaines River was flowing. It had about a 12-foot fall there, I couldn't say how fast. The Desplaines was going three miles, I mean at Joliet in the summer time. That is where they have confined the stream down there. I don't know how much water flows over the Bear Trap Dam in the last seven years. I would not have any means of judging how many cubic feet pass over the dam when they have a 6-foot flow. The way I could tell I looked at the dam and you could see about six inches of water flowing there. I couldn't tell how far down it was at the present time or anything about it or how wide the dam was.

I believe in 1902 we had a cloud burst in the vicinity
3095 of Joliet. That was the time the city was flooded downtown. I don't remember a cloud burst, I don't remem-

ber whether it was a cloud burst or not. The flood was brought on by heavy rains. There have been several floods there. Spring Creek is higher in the spring than at other times. It is higher now at all times because they have got more water coming in at different places. They have got that all dug out and have sewers coming into it from all over, big tiles into it. They tell me there is more water in it now than ever. I last saw it three months ago. I think there was more water in it than formerly. I have seen it when there was no water in it. I have not seen it during the last ten years when there was no water in it.

3096 I never did any work for the Sanitary District. At low water since 1900, I have noticed an increase in the level of the Illinois River about a foot over what it was prior to that time. I couldn't say definitely it was one foot, that is what I judged it raised, eight inches or a
3097 foot, or ten inches. Somewhere in that neighborhood.

ROBERT SHANNON, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Robert Shannon. I reside at Joliet. I am a dredging contractor and have been engaged in business in Will and Kankakee Counties. Have been dredging farm drains.

Among the work which I have done in those counties, I dug Spring Creek in the City of Joliet, 80,000 yards, and
3098 from there I moved over to Kendall County and dug five miles, for farm drainage purposes. I could not tell the acreage that was drained but the land was drained for a mile on each side of the operations and some places less. It drained into the Fox River.

In Kankakee County I dug the Raymond Drainage Ditch, seven miles, located eight miles west of Kankakee, or near the central part of the county. It was 30 feet on top and 12 feet on the bottom, and an average depth of 6 feet.

The Kendall County Ditch was 25 feet on top and 10 feet at the bottom. The Spring Creek improvement was 3099 40 feet on top and 9 feet cut, 9 feet deep. Spring Creek empties into the Desplaines River. The Kendall County improvement empties into the Fox River. The Kankakee County improvement empties into the Kankakee River.

I am now digging four miles in Will County, a ditch four miles long, which empties into Spring Creek, and from there into the Desplaines River. That improvement is 20 miles away from the previous improvement in Spring Creek. Spring Creek, as far as I have done it, starts up in Green Garden Township and runs down through Joliet Township and empties into the Desplaines River south of the City of Joliet. Before I commenced to improve it Spring Creek at times was a good sized river; other times it was not so large. I say it was as 3100 large as a good sized river, it was 20 or 25 feet across, 3 to 5 feet deep.

This improvement in Spring Creek was conducted four years ago; Kendall County three years ago; the Will County work last season and the Kankakee County work last season. The condition of the country in the vicinity of these ditches before I commenced to work was all water; afterwards it drained into the ditch and then into the rivers I mentioned.

I am acquainted with Hickory Creek. It is a part of Spring Creek, the two of them forms one at the lower 3101 end. I have known of high water on that country at times of rain in Hickory Creek. I have known it to flood the whole section of the country there, a section a

mile square. I should say eight to ten feet it would rise. I know of casualties happening there; at McDonough street they were driving across and two girls were drowned by the creek. The rise was so sudden; that was in June, '92. I know of people being imprisoned in the 3102 houses there at the same time. I helped them out. The house was along Joliet street, Desplaines street, Water street and up as far as Chicago street. The country was covered with water at a depth of from three to eight feet. We went about in boats in the public streets. That condition prevailed for three days. The Sanitary District does not flow into Hickory Creek. The Sanitary District in no way feeds Hickory Creek.

I know where the Desplaines River is located, have 3103 known it for 40 years. Before the Sanitary District was opened in low water there was always water there. Sometimes in different places two feet or three feet. I know certain places where there was 20 feet. During the last six or eight years since these drainage operations have been carried on, there is a difference in the amount of water that the Desplaines River carries above the point where it joins with the Sanitary District water. The river is higher above where the Sanitary District comes in on account of the tiles and drainage flowing in there. It carries more water.

3104 I have seen the place where the Sanitary District discharges into the Desplaines River. It is about 500 feet above Robey street in Joliet. The Desplaines River and Sanitary District current come together. I have seen the Bear Trap Dam. I have seen it every Sunday pretty near, used to go fishing up there on the Desplaines River. I have observed the water coming over the Bear Trap Dam. I have noticed it as much as four inches coming over the dam and as much as 10 to 12 inches coming over the 3105 dam. I don't think I have seen more than 10 or 12

inches. There is no water of any kind coming from the Sanitary District channel discharged at the controlling works that does not enter the Desplaines River. The Desplaines River flows through the City of Joliet. In passing the portion of the city in the most thickly populated portion it is about 320 feet wide; in the narrower portions it is about 220 feet.

All the water that comes from the Desplaines River and all the water that comes from the Sanitary District flows between two walls constructed there. I should say at Jefferson street it was three feet six or four feet deep; the current is about two and one-half miles.

I know where the Desplaines goes down and joins the Kankakee; I have fished there hundreds of times since 1900. Below that point the river would be perhaps six feet deep. The water is deeper and swifter on the Illinois than it is on the Desplaines. At that point the Illinois River would be about two feet deeper than it was before the junction was made by the Desplaines and Kankakee where the two streams unite.

The Kankakee River at its mouth is about three feet deep. Then after the Desplaines River would flow into it it would raise the Illinois about two feet. I should judge that the current there is running about four miles an hour. There is a tolerably steep slope at that point.

I have been acquainted with the Illinois River below these points down as far as DePue Lake. That is located near Bureau Junction. I have been acquainted with the river since the opening of the Sanitary District channel. I observed the river before the opening of the channel. I was hunting on Dresden Islands for a good many years before the Sanitary District water was turned in there and afterwards. Since the Sanitary District was opened you could see something of a change in the level of the stream. On the point of the island I should judge

they raised the water from eight to ten inches since it was turned in. The river in ordinary stages is about 500 feet wide. It parts at the island, 250 feet on each side.

Cross-Examination by Mr. Butters.

In order to tell the difference in the depth of the Illinois River you would have to know the conditions, all the conditions for a period of time before you attempted to give the measurement on that part of the Illinois
3112 around Dresden. I never measured it, but I have hunted there when I drew my boat up and we had a blind built there and the water has never raised into that blind yet, into the blind where we shoot ducks. That is about 12 inches above the water there.

I could not tell where the average low water stage was. The average I was giving was on the water as I have seen it at times. I don't know what the conditions were existing for a month or three or four weeks before those dates. I don't think it would necessarily depend upon what the conditions were for a period of time before I took my measurements in order to get the same period of time of the succeeding year and like conditions, to tell the conditions. If I was down on the shore to hunt
3113 or fish there, I could tell whether it was higher or lower
3114 at that point. If I was wading across, going there to a certain portion of it to hunt ducks, I would know whether it was high or low. I think I would know the comparative stages of water at that time. I don't think a person who lived on the bank of the river or near to it and sees it from day to day would have a better opportunity than one who saw it but once every year or so. He may not observe it the same way.

I am familiar with the Desplaines River just below Lyons. I know the spillway built there by the Sanitary

3115 District. It is alongside of the river. I knew that before that was put in a part of the water that flowed in the Desplaines went into the Chicago and into Lake Michigan. It turns that part of the water that used to run into Lake Michigan this way. I don't know how large a part is drained by this structure. There must be some
 3116 because it forced them to put it there. I don't know what the area was.

I am practically familiar with the Illinois River from Joliet to La Salle in places. I could not say to La Salle, just down to Starved Rock.

Q. Have you observed in your travels down there the trees that are dead now, standing out in the water perpetually from January 1st, one year to January 1st, the next year, have you observed that?

Mr. CHIPERFIELD: I object, assuming that is true.

3117 Objection overruled; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. There are dead trees there.

I know some trees grow in water, some that don't. I don't know they used to be on dry land. I don't know whether they were ever on dry land.

Q. Isn't it a fact that the water there, we will say, since 1900, probably since 1902, has been many feet deep around those trees and they are dead from the effects of water?

Mr. CHIPERFIELD: I object, if your Honor please.

Objection overruled; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

3118 A. I could not say there was a foot deep or two inches deep or anything. I know there are dead trees there and that is all I do know about it.

I don't know those trees did not have their birth in the water.

I have seen the water on the Bear Trap Dam four inches, perhaps a foot deep going over the Bear Trap Dam. The Bear Trap Dam is something like the leaves of a book. The open side would be down stream. When the dam is clear up there is no water coming over. As they let it down this way, the flow increases; tends to lower the water in the channel, as they lower it more water comes over. I could not tell what stage the water was when I
 3119 saw the dam. I know the Sanitary District officials can tell the number of cubic feet passing over the dam. The
 3120 dam looks to be 150 to 200 feet wide. When they raise the dam the tendency is to check the water, that is, it runs faster and goes over in a thinner sheet. I pretend to say that I could stand on the bridge looking down and form a correct idea of the number of inches of that sheet of water. I did not put a stick in it. I can look down
 3121 and I can see the dam. It might have been 9 o'clock, noon, or 4 o'clock in the afternoon when I was coming back. I don't think I ever saw two feet and a half or three feet of water on the dam. I did not or I would have told you.

The channel at Jefferson street is 220 feet wide. The water was about 3 feet 6 to 4 feet deep, running about 2 to $2\frac{1}{2}$ miles an hour. I never measured it. I base my judgment on an inspection of it. I never followed floats
 3122 down there,; but I have followed blocks down there. The Illinois flows about four miles an hour and about six feet deep for about a mile from its source. I do not know what portion in the Illinois River in July, 1904, was Sanitary water. I don't know whether the Sanitary District engineers can tell how much water in the Illinois is Sanitary District water.

3123 GEORGE W. GUERTIN, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is George W. Guertin. I reside in Chicago. I am connected with R. G. Dun & Company as chief clerk. The business of R. G. Dun & Company consists of gathering and distributing information for the benefit of their subscribers to enable them to determine credit risks.

I believe the La Salle County Carbon Coal Company is one of our subscribers. We have never had a very 3124 complete statement from the company. Without reference to whether it is a complete statement or not, we have a statement from the La Salle County Carbon Coal Company with reference to their financial condition. One statement was received September 24, 1908, and another one October 26, 1909. These are the only two statements that we find.

Referring to the statement of October 28 or 26, 1909, I have the envelope in which it was received. That statement was received in due course of business by R. G. Dun & Company and purports to be signed by H. S. Ha- 3125 zen, treasurer. It was received by R. G. Dun & Company October 29, 1909, and ever since that date it has been in our files. It was received in an envelope addressed to W. A. Douglass, manager. It was one of the printed envelopes and forms which is used by R. G. Dun & Company. I am familiar with those facts.

The statement of September 24, 1908, was received September 26, 1908. I have the envelope in which that 3126 statement was received. The statement purports to be signed by H. S. Hazen, treasurer. It appears to be on the letterhead of the La Salle County Carbon Coal Company, and the envelope bears the stamp of the La Salle

County Carbon Coal Company and postmarked La Salle, Illinois. That was received by us in due course of business. It has remained ever since in the files of R. G. Dun & Company. The offices of R. G. Dun & Company are located in the New York Life Building, Chicago, Illinois. As chief clerk, as a part of the business which I supervise, I have knowledge and custody of these papers.

3127 Mr. CHIPERFIELD: Now I desire, if your Honor please, and we will not take them, they will be restored to you in any event—I desire to have the envelope addressed to W. A. Douglass, manager, marked as an exhibit for identification.

Whereupon said envelope was marked Exhibit “35.”

Mr. CHIPERFIELD: I desire to have the statement accompanying the envelope which is dated October 26, 1909, marked an appropriate number.

Whereupon said document was marked Exhibit “36.”

Mr. CHIPERFIELD: I desire to have the letter of September 24, 1908, marked as an exhibit for identification.

Whereupon said document was marked Exhibit “37.”

Mr. CHIPERFIELD: I desire to have the envelope accompanying that marked as an exhibit for identification.

Whereupon said document was marked Exhibit “38.”

3128 Which said marked exhibits “35,” “36,” “37” and “38,” are in the words and figures, respectively, as follows:

EXHIBIT “35.”

3129

EXHIBIT “36.”

Statement as a Basis for Credit
made to

THE MERCANTILE AGENCY, R. G. DUN & Co.

For the use of its subscribers only.

By
Engaged in the Coal business at Co. of

..... State of From inventory of 190.....

Dated, La Salle, Ill., Oct. 26, 1909.

.....
.....

Succeeding

Authorized capital \$1,000,000. Number of shares 10,000

Par Value \$.....

Amount of stock subscribed \$..... Amount paid in (in cash) \$900,000.

Amount paid in otherwise than cash, and how \$.....
10,000 not issued.

Limit of debt allowed? \$ None How many acres coal do you own? 23400 A

How many acres surface land do you own? 2100. What is its value per acre? \$100 to 250 per A.

How much (if any) is it encumbered? \$ None How many acres do you lease? None.

How much royalty do you pay? \$ None How many shafts do you operate 5

How much have you invested in engines and hoisting machinery? \$.....

How much invested in tracks and tools? \$.....

How much invested in coal cars? \$ None Are they owned or leased?

How many miner's houses do you own? 179 What is the value of each? \$ Av 600

Encumbrance, (if any) on same? \$ None If machinery is mortgaged, how much \$ None.

What is the capacity of your mine? Your average daily output?

What is the amount of good accounts? \$ All good.

Amount of good notes? None—Cash only.

Amount of cash on hand or in bank \$.....

Amount of bonded indebtedness \$ None

3129 How is the same secured? \$.....

How much is the floating indebtedness? \$ None.

Do you own a supply store in connection? No How
much have you invested therein? \$.....

Under what style is it run?

Officers: Pres. V-Pres.

Sec'y., ... Treas

Gen'l Mg'r., ...

Sign here full name, La Salle County Carbon Coal
Company.

Signed by H. S. Hazen, Treas.

References: All bills of every kind are Audited and
paid the 20th of each month No indebtedness
of any kind after that date

This information for your use only and Not to be given
to Public.

We don't ask much Cr. and feel like *Vanderbilt* on a
certain occasion.

Remarks:

3130

EXHIBIT "37."

"LA SALLE, Ill., September 24, 1908.

R. G. Dun & Co.,
Chicago.

GENTLEMEN:

Have yours of the 23rd inst., with request for state-
ment of finances of this company, and beg to say for
the reason that there is no probability of our company
ever being called upon to issue bonds, or ask large or
extensive credits, we do not think it necessary that the
financial standing of the company should become com-
mon property of every Tom, Dick and Harry, who wants
a report. The Company's assets figure very largely over
a \$1,000,000,000.00 and we have no encumbrances on the

property, no bonds, and no debts of any kind, except such as are carried by the stockholders themselves.

Our liabilities consist of small merchandise bills, and bills for repairs to machinery. Outside of this, we incur no indebtedness, except occasionally to buy an engine, or something of that kind.

Very truly yours,

(Signed) H. S. HAZEN,
Treasurer."

3131 Exhibit "38."

3132 Mr. CHIPERFIELD: I desire to offer in evidence Exhibits 35, being the envelope addressed to W. A. Douglass, 36, being the statement made by Howard S. Hazen, treasurer, the letter of September 24, 1908, marked Exhibit "37," and the letter accompanying the same marked Exhibit "38." I desire to offer the same and each of them in evidence.

Objection by plaintiff; objection sustained; to which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: Your Honor, this is a very important matter and before the court passes on it I want to be heard briefly.

The COURT: Well, I will hear you. You want to be heard now or let them take out the original.

Mr. CHIPERFIELD: Well, this witness is here now, and if it is anything that goes to other than the materiality or other than the foundation—

3133 Mr. O'CONOR: We don't care to cross-examine.

Mr. BUTTERS: We don't object to the foundation.

The COURT: Well, I think I will overrule the objection on Mr. Butters' statement. I overrule the objection.

Mr. BUTTERS: We want to be heard on the materiality.

The COURT: I will hear you then. I will hear you now.

Mr. O'CONOR: We would like to take it up out of the hearing of the jury.

The COURT: I will hear you. You may retire for a few minutes, gentlemen.

(Jury retires.)

The WITNESS: Will you keep the papers here?

Mr. CHIPERFIELD: At the appropriate time I will ask to have compared copies substituted.

The COURT: I will hear what you have to say now.

Mr. O'CONOR: Let me read the letter first.

The COURT: I don't know what is in the letter. I am assuming there is a statement there relative to the value of the land.

Mr. CHIPERFIELD: There is.

The COURT: So far as that is concerned, the other part of it is not proper.

3134 Mr. CHIPERFIELD: That is all we are concerned in. I don't know whether there is a statement in the letter in relation to the land.

The COURT: If there is I will exclude it.

Mr. O'CONOR: The only thing is they figure the assets the same as subsequently figured on it, that is the whole statement. The materiality of it I object to, and everything else in this statement except the value of this land.

The COURT: Anything else I will exclude.

Mr. O'CONOR: Yes, that is all we are thinking ourselves incompetent.

The COURT: Yes. And of this exhibit that has no bearing, contains no statement with reference to the value of the land, I would exclude without any further discussion.

3135 Mr. O'CONOR: Now the date of this Exhibit "36" is October 26, 1909. Now this is the way it reads, "How many acres of coal do you own? A. 23,400 acres. How many acres of surface land do you know? 2100."

The COURT: Well, that is irrelevant.

Mr. O'CONOR: "What is its value per acre? One hundred to 250 per A." Now our contention in regard to this is it was made on October 26, 1909, and it is too remote. Simply a general statement here without any reference to any land and is made some years, some nine years almost—

The COURT: You cannot raise that question in view of Mr. Butters' statement that it does not concern this land. I have admitted the proof because he said he made no objection to the foundation.

Mr. O'CONOR: No, no.

The COURT: Just ran to the competency of it.

Mr. BUTTERS: That is all that I wanted to assert to the court.

The COURT: The materiality of it.

Mr. BUTTERS: Simply in that connection I made the objection, there is no reason why it should not be sustained. There isn't any authority in this wide world that would let us prove the value of the land nine years afterwards, and if there isn't there isn't any authority to allow them to disprove it. My objection—probably I
3136 ought to let somebody else object.

Mr. O'CONNOR: I didn't understand Mr. Butters' objection in that spirit, your Honor.

The COURT: Sir?

Mr. O'CONOR: I didn't understand the objection in the same light the court did.

The COURT: Well, the record shows what he said.

Mr. BUTTERS: What does it show I said?

The COURT: You may proceed with your argument.

Mr. O'CONOR: Well, that is all there is to it so far as I am concerned.

The COURT: Objection overruled. Call in your jury. The statement with reference to the land you may read. the balance I will exclude.

Mr. CHIPERFIELD: Very good. I may read the date?

The COURT: Yes, you may read the date.

Mr. CHIPERFIELD: And I suppose the signature?

The COURT: Yes, sir.

(Whereupon the jurors resumed their places.)

Mr. O'CONOR: What exhibit is that?

Mr. CHIPERFIELD: Exhibit "36."

3137 LA SALLE, ILLINOIS, October 26, 1909.

Q. How many acres of surface land do you own? A. 2100.

Q. What is its value per acre? A. \$100 to \$250 per acre.

LA SALLE COUNTY CARBON COAL COMPANY,
By H. S. HAZEN,
Treasurer."

AMOS R. BROCKWAY, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chiperfield.

My name is Amos R. Brockway. I live in Joliet and have resided there 35 years. Am engaged in the livery business. I live on Hurtmore street. I reside four miles
3138 from the controlling works of the Sanitary District. I have been acquainted with the Desplaines River all my life. Am 55 years of age. Before the year 1900, you could walk across the Desplaines River in lots of places. I could not state positively its width but below the old dams that used to be there it would be 250 feet, somewhere along there, below Jefferson street.

Q. I don't want to get into the city yet, I want to keep up above where the Sanitary District went in. A. All right.

At the point that is called the basin it would probably

be 300 feet wide. At that point before the Sanitary Dis-
 3139 trict was opened the Desplaines River was not over 150
 feet long. In dry weather it was very low. During the
 last eight or ten years with reference to the stream car-
 rying more or less water there isn't any material differ-
 ence. It might be a few inches. I don't think there is
 any material difference. I understand you refer to the
 old river above the point where the Sanitary District
 3140 channel comes in. I know where the Sanitary District
 channel comes into the Desplaines River. It is at the
 Lockport controlling works. I have seen them from
 time to time.

The most water I ever saw going over the Bear Trap
 dam was eight or ten inches. All the water that comes
 through the controlling works enters into the Desplaines
 River basin. It then flows through Joliet and is found
 at Robey street bridge. Below that point the river nar-
 rows a little over 200 feet wide. There are concrete walls
 3141 on each side and between those walls the river flows. I
 see it almost every day. As the water flows in the chan-
 nel containing the Desplaines River and the Sanitary
 District waters it is not over two and one-half to three
 3142 feet deep. It does not flow over two miles and one-
 half an hour. At that point all the water which is
 discharged from the Sanitary District channel and all
 the water which is contained in the Desplaines River
 flows through. From that point it goes on down to the
 Desplaines.

I have been to the point where the Desplaines and Kan-
 kakee unite since 1900 on several occasions. I have seen
 the Kankakee River just above where it unites. The
 Kankakee River is the largest stream. Just below the
 point where they come in, the Illinois River is from
 three to five feet deep and maybe 500 feet wide. Just be-
 3143 low the point of junction since 1900, there has been a

difference of between seven and eight inches in the Illinois River.

Cross-Examination by Mr. O'Connor.

Where the river has been restricted from 400 feet to
3144 250 feet at Joliet it has not deepened the water there.

It runs through faster. It has not deepened it two to
four inches. There is two or three inches difference
from what there was in former years. I don't know
3145 how much water is turned down into the Desplaines
by the Sanitary District of Chicago on account of the
spillway at Lyons, or how much of that water goes into
the Kankakee at or near its mouth. I could not deter-
mine how much water there is in the Sanitary District
by taking gauge readings at the Sanitary District dam
and taking gauge readings at the Desplaines River. You
might know how much water goes over the bear trap
dam but you wouldn't know how much water came into
the river below, you couldn't measure that. It does not
3146 flow regular every day. I never measured the water
flowing over the Bear Trap Dam. I know it is measured.
If you take and measure the flow over the Bear Trap
Dam and the flow of the Desplaines River, you would not
know the difference in the aggregate flow by simply
adding the figures together at that point. If you knew
3147 the flow of the Desplaines over the Bear Trap Dam, by
deducting the Desplaines flow from the total flow you
would know what was coming from the Sanitary Dis-
trict.

Below the Bear Trap Dam the valey at places is quite
wide and others it runs very narrow.

I never testified for the Sanitary District before. I
3148 have no feeling in this law suit. I came to Ottawa last
night. I went to the Clifton House and met a whole
lot of people I didn't know. I went to room 214. There

wasn't any maps or plats in that room. I have no objection to answering your questions.

The flow of the Desplaines has increased during the last ten years. I couldn't tell how much. I know that a tremendous lot of territory has been drained into it. Through Joliet it has increased two to three inches; it is not as wide as it used to be. The Desplaines flows in about 18 miles below Joliet. The water from the dam goes into the Desplaines a short distance below the dam.

I go down to the river there at the bridge at Joliet. I said the increase had been about two or three inches and the places I mean where it goes faster is where the stream itself has been narrowed. A lot of places where it has not been deepened, where they had dredged it out.

FRED HAWLEY, a witness for the defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Fred Hawley, I reside at Pekin, Illinois. I am a licensed engineer and river pilot. Age 37. I was born between Hennepin and Peru on a canal boat. I have been on the river ever since. I have been boating between Chicago and Grafton; done most of it on the Mississippi and done some of it on the Illinois. I have boated on the Illinois and Michigan Canal.

In a general way I have boated on the Jack Robinson, City of Henry, Peerless, Niagara and Joliet. It would take quite a while to name them all. I have been on most of the river boats around here. The William Wallace of Joliet.

I know the Illinois River in the vicinity of La Salle. I know where the coal lands are just at the edge of La Salle.

I knew the high water in the Illinois River in 1900 and the bottoms opposite Peru and La Salle. I have seen the lands when they were overflowed opposite Peru. During the last eight or ten years I have worked on the river as pilot and engineer. I know a boat by the name of City of Henry. I ran that boat in 1906 and 1907.

I know the bars in the Illinois River above the Henry lock. Six years ago in August I was aground there and lay there 26 hours. Captain Swain came up with a crew and helped put the barge off and came up afterwards with a steam boat and helped pull it off with a line. The pilot of the boat was Mark Houston.

I was boating there then. Our boat drew four feet eight at the stern and four feet at the bow.

I have observed the current in the Illinois River since 1900. The current is about three miles an hour. Before that there wasn't any current at all. Since 1900, I have had an opportunity to observe the stages of water in the Illinois River and compare it with the stage of water before that time. Since that time there has been a difference of about a foot of water. I go by the Henry Dam. Twelve inches is my opinion. I had an opportunity to observe the rainfall during the last ten years.

3158 *Cross-Examination by Mr. O'Connor.*

Prior to 1900, the water flowed over the Henry Dam in low water. Five years ago I was in Henry laying there and the water was about the same. I should judge a foot of a fall there. Before 1900, they put flash boards on the dam. I saw them before 1900. Put there to hold the water up. I should judge there would be about a foot of difference in the fall of the water. The flash boards were about 12 inches. They have not been used at the Henry Dam in the last six or eight years.

I could not tell how much water is going over the Henry Dam at the present time. About five years ago there was about a foot difference, a foot in the fall. I was not there in the summer. In 1911, there was a fall there at that time but I don't remember just how much it was. I know we had to lock through, everything had to lock through. My judgment is as to how much the Illinois River has been raised in the last ten years is based on my experience at the Henry Dam. I was not there last year; I was there the year before. I cannot
 3160 say how much we had to lock through.

I should judge the Henry Dam is about 12 feet wide. I don't know how wide the bridge is at Peru or the river
 3161 at La Salle. I should judge it was 400 feet wide.

3162 Mr. CHIPERFIELD: I want to offer in evidence a certified copy of the map of the Partridge Drainage and Levee District of Woodstock County, certified by the clerk of the County Court of Woodstock County, with the seal of the court attached and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "40.")

Mr. CHIPERFIELD: I was to offer in evidence a certified copy of a map of the East Peoria Drainage and Levee District in Tazewell County, certified to by the county clerk of Tazewell County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "41.")

Mr. CHIPERFIELD: I want to offer in evidence a certified copy of the map of the Spring Lake Drainage and Levee District in Tazewell County certified to by the county clerk of Tazewell County with the seal of the court attached thereto and I ask to have it marked as an exhibit

(Said document was thereupon marked Exhibit "42.")

Mr. CHIPERFIELD: I want to offer in evidence a certified copy of the map of the Lacey Levee and Drainage District in Fulton County, certified to by Austin 3163 Onion, clerk of the County Court of Fulton County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "43.")

Mr. CHIPERFIELD: I want to offer in evidence the certified copy of the plat of the Coal Creek Levee and Drainage District in Schuyler County, certified to by the county clerk, Isaac C. Lewis, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "44.")

Mr. CHIPERFIELD: I want to offer in evidence the certified copy of the plat or the map of the Crane Creek Drainage and Levee District of Schuyler County, Illinois, certified to by Isaac Lewis, clerk of the County Court, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "45.")

Mr. CHIPERFIELD: I want to offer in evidence the certified copy of the map of the Magee Creek Levee and Drainage District of Pike County, Pike and Brown Counties, certified to by William S. Binns, clerk of the County Court, and the seal of the court attached thereto and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "46.")

3164 Mr. CHIPERFIELD: I want to offer in evidence a certified copy of the map of the Scott County Drainage District in Scott County, Illinois, certified to by J. R. King, clerk of the County Court of Scott County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "47.")

Mr. CHIPERFIELD: I want to offer in evidence a cer-

tified copy of a map of the Big Swan Drainage and Levee District in Scott County, Illinois, certified to by J. R. King, clerk of the County Court of Scott County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "48.")

Mr. CHIPERFIELD: I want to offer in evidence certified copy of the plat of the Hill View Drainage and Levee District of Green County, Illinois, certified to by Thomas D. Doyle, county clerk of the County Court of Green County, with the seal of the court attached thereto and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "49.")

Mr. CHIPERFIELD: I want to offer in evidence certified copy of a map of the Hartwell Drainage and Levee District, in Green County, certified to by Thomas D. 3165 Doyle, clerk of the County Court of Green County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "50.")

Mr. CHIPERFIELD: I want to offer in evidence certified copy of the map of the Keats Drainage and Levee District of Green County, Illinois, certified to by Thomas D. Doyle, clerk of the County Court of Green County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "51.")

Mr. CHIPERFIELD: I want to offer in evidence certified copy of a map of the Eldred Drainage and Levee District in Green County, Illinois, certified to by Thomas D. Doyle, clerk of the County Court of Green County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "52.")

Mr. CHIPERFIELD: I want to offer in evidence certi-

fied copy of a map of the Nutwood Drainage and Levee District in Jersey County, Illinois, certified to by John C. McGrath, clerk of the County Court of Jersey County, with the seal of the court attached thereto and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "53.")

3166 Mr. CHIPERFIELD: I want to offer in evidence certified copy of a map of the Mauvaise Terre Drainage and Levee District of Scott County, Illinois, certified to by J. R. King, clerk of the County Court of Scott County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "54.")

Mr. CHIPERFIELD: I want to offer in evidence certified copy of the map of the Coon Rod Drainage and Levee District in Morgan County, Illinois, certified to by C. A. Bowen, clerk of the County Court of Morgan County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "55.")

Mr. CHIPERFIELD: I also want to offer in evidence certified copy of the plat of Coal Creek Drainage District of Marshall County, Illinois, certified to by Thomas A. Connell, clerk of the County Court of Marshall County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "56.")

Mr. CHIPERFIELD: I want to offer in evidence certified copy of the plat of the Otter Creek Drainage District, in Fulton County, Illinois, certified to by Austin Onion,
3167 clerk of the County Court of Fulton County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "57.")

Mr. CHIPERFIELD: And finally I want to offer in evi-

dence certified copy of the plat of Hagar Slough and Drainage District, in Cass County, Illinois, certified to by Leo Schyles, clerk of the County Court of Cass County, with the seal of the court attached thereto, and I will ask to have it marked as an exhibit.

(Said document was thereupon marked Exhibit "58.")

Mr. CHIPERFIELD: Each of these certified copies of maps I offer in evidence in connection with the testimony of the witnesses.

Which said maps marked Exhibits "39" to "58," both inclusive, are in the words, figures and characters following, viz.:

3168	EXHIBIT "39."
3169	EXHIBIT "40."
3170	EXHIBIT "41."
3171	EXHIBIT "42."
3172	EXHIBIT "43."
3173	EXHIBIT "44."
3174	EXHIBIT "45."
3175	EXHIBIT "46."
3176	EXHIBIT "47."
3177	EXHIBIT "48."
3178	EXHIBIT "49."
3179	EXHIBIT "50."
3180	EXHIBIT "51."
3181	EXHIBIT "52."
3182	EXHIBIT "53."
3183	EXHIBIT "54."
3184	EXHIBIT "55."
3185	EXHIBIT "56."
3185	EXHIBIT "57."
3187	EXHIBIT "58."

PANHANDLE DRAINAGE AND LEVEE DISTRICT
WOODFORD COUNTY ILLINOIS

Exh 40

PLANS FOR LEVEES AND DITCHES TO ACCOMPANY
REPORT IN SAME
BY
CHAS H BURN ENGINEER

Scale 1 inch = 400 feet

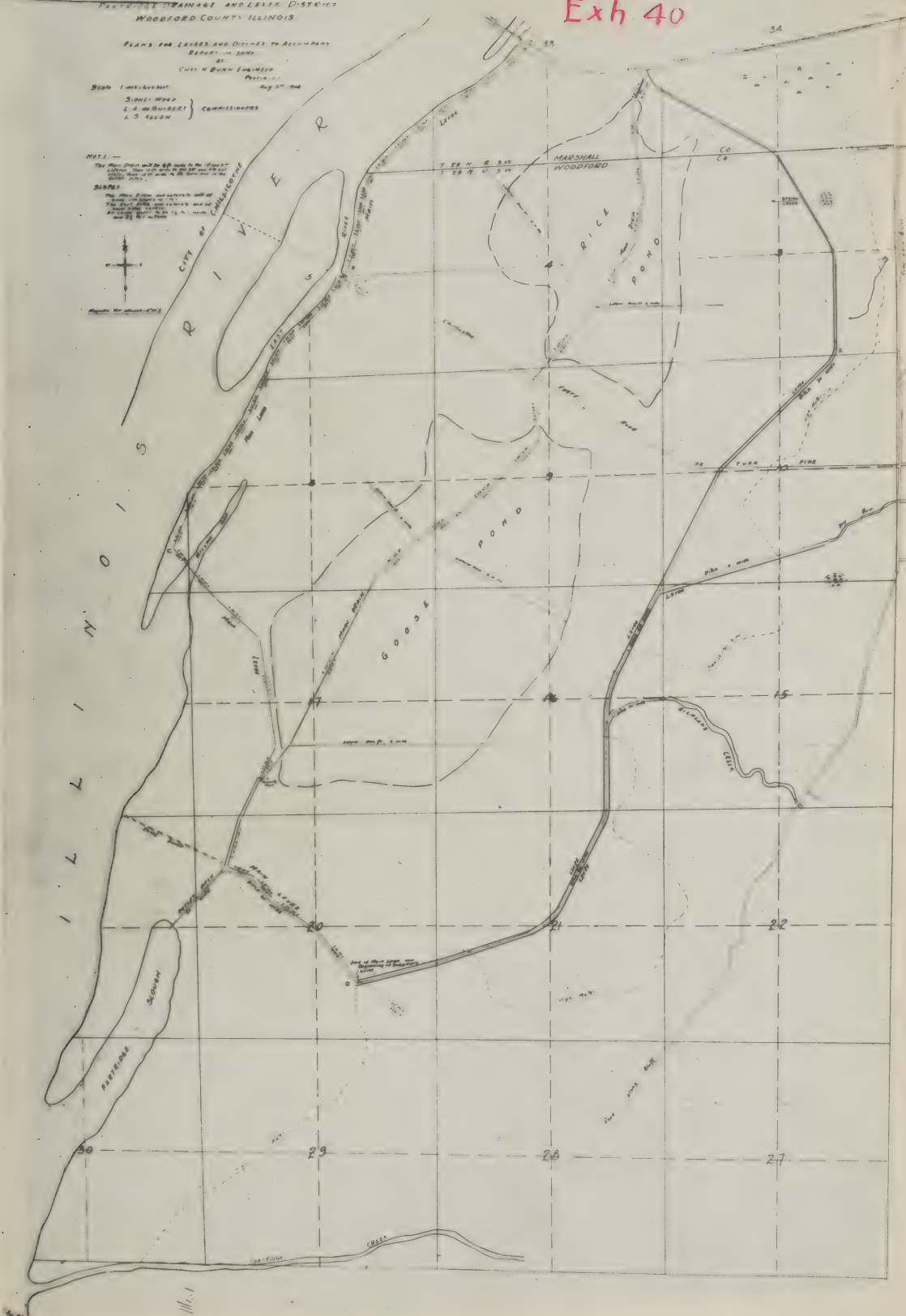
Signed: WOOD } COMMISSIONERS
L A de GUINARD
L S TACON

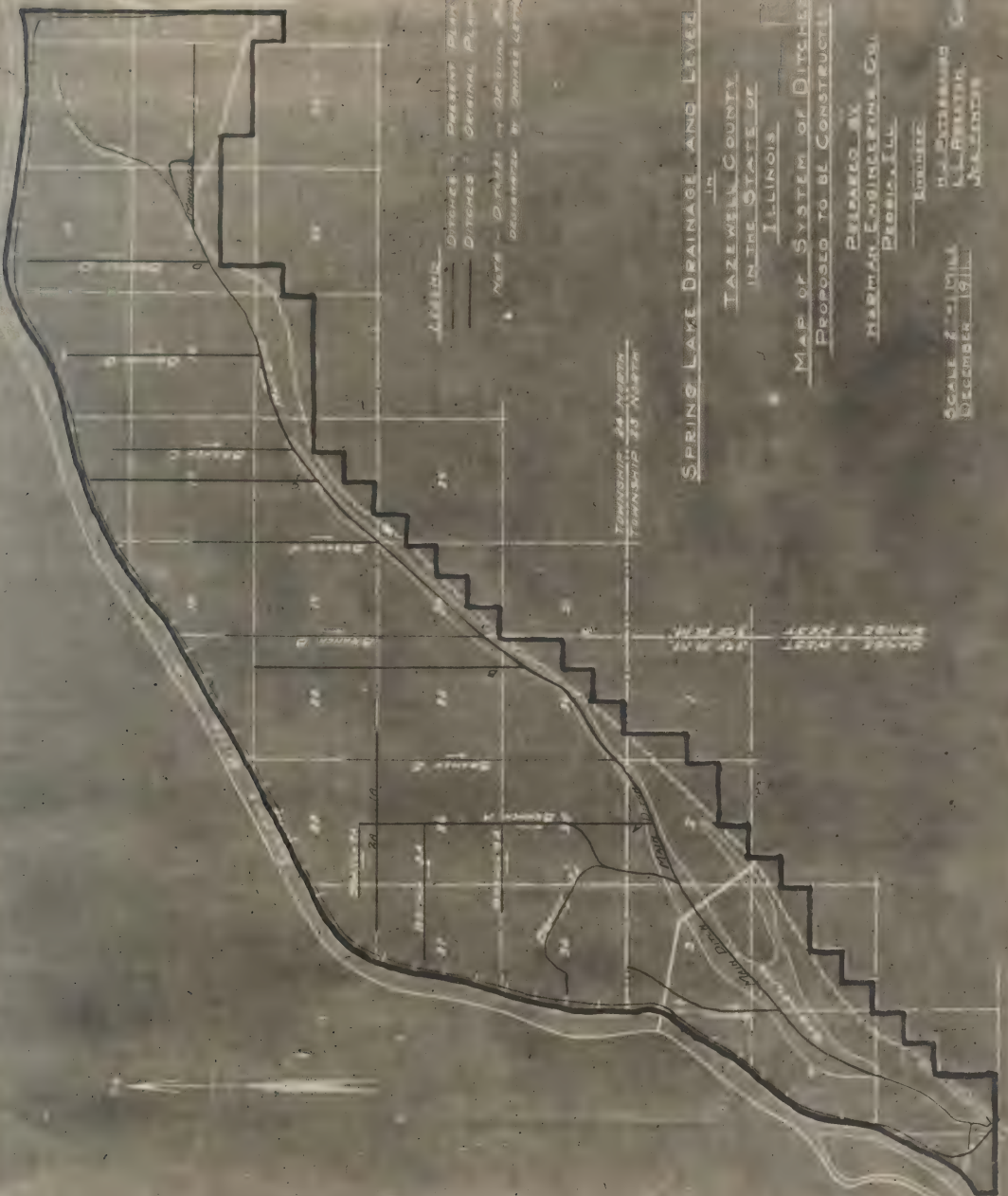
NOTE -

The Plans shown on this map are for the purpose of
showing the location of the proposed levees and
ditches. The actual construction of the same
shall be subject to the approval of the
Board of Directors of the District.

LEGEND

The solid line and arrows will show
the location of the proposed levees and
ditches. The dashed line will show the
location of the existing levees and
ditches.





DITCHES - EXISTENT DRAIN
 DITCHES - ORIGINAL PLAN
 MAP OF SYSTEM OF DITCHES
 PROPOSED TO BE CONSTRUCTED
 PREPARED BY
 HARMAN ENGINEERING CO.
 PEORIA, ILL.
 DECEMBER 1911

SPRING LAKE DRAINAGE AND LEVEL DISTANCE

TAZEWELL COUNTY
 IN THE STATE OF
 ILLINOIS

MAP OF SYSTEM OF DITCHES
 PROPOSED TO BE CONSTRUCTED

PREPARED BY
 HARMAN ENGINEERING CO.
 PEORIA, ILL.

SCALE 2" = 1 MILE
 DECEMBER 1911

$E \times 11.114$



CRANE CREEK

LEVEE & DRAINAGE DISTRICT

Schuyler County Illinois

Commissioners

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908

1907-1908



Exh. 47



Exh. 48

0.3

MAP
OF
BIG SWAN
DRAINAGE & LEVEE DISTRICT.
Scott County, Ill.





HARTWELL
DRAINAGE ELEVEN DISTRICT
Greene County Ill.

MADE BY THE U.S. GEOLOGICAL SURVEY
FROM AERIAL PHOTOGRAPHS
AND SURVEY DATA
1908

General Land Drainage & Lower Section





THE HUTWOOD
LAND AND TRUST DISTRICT
PIPER COUNTY, ILLINOIS
1888

(1)



MAP OF

COON RUN

LEVEL⁴ DRAINAGE DISTRICT

Morgan and Scott Counties Illinois

Commissioners
C. H. Purnell
Wm. McCall
Henry Stover

Scale - 25 ch. = 1 in.



OTTER CREEK DRAINAGE DISTRICT

Exh. 57

TOWNSHIP 3 1/2 NORTH RANGE 3 EAST FULTON COUNTY ILLINOIS

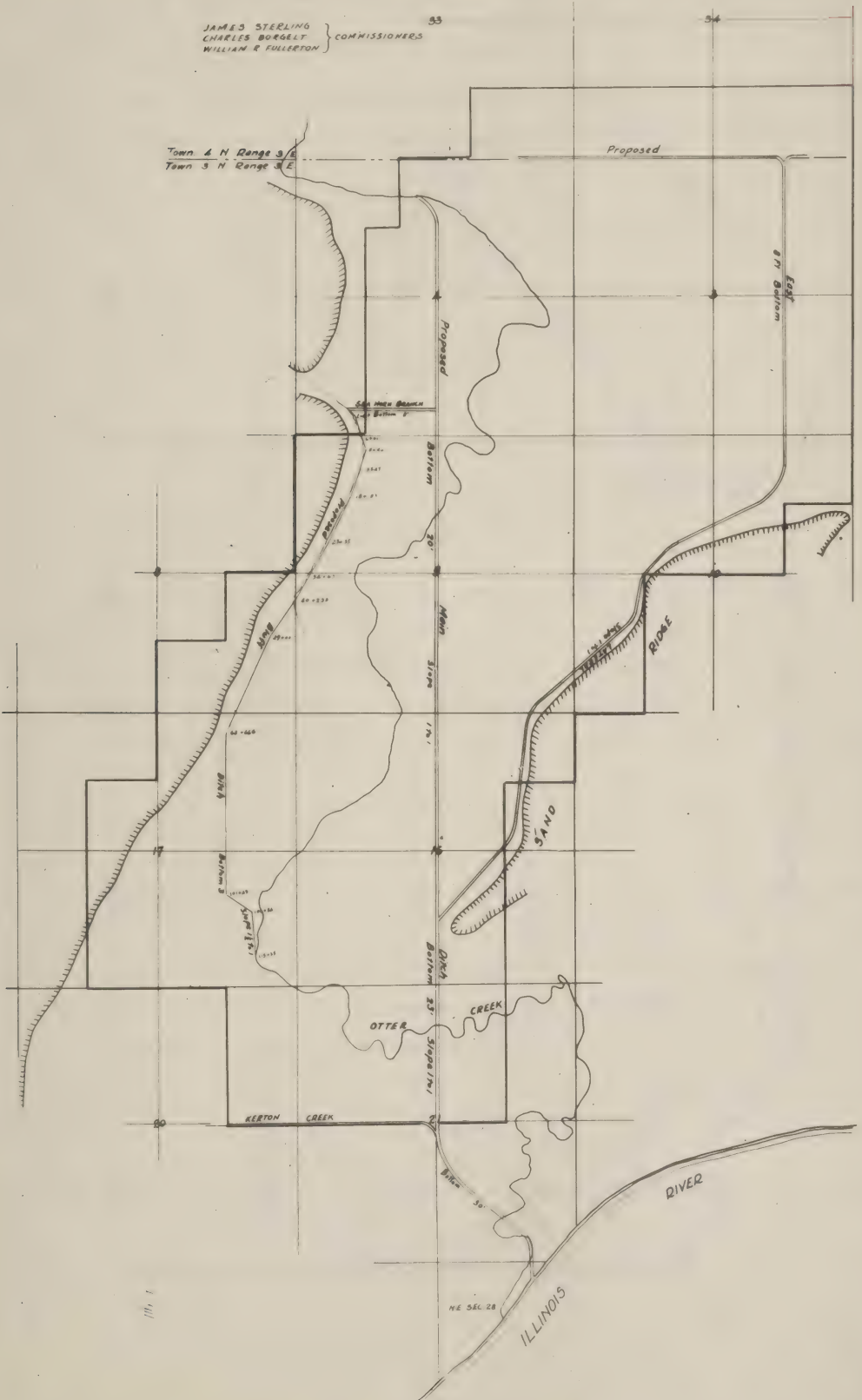
Scale 1" = 1000 feet

R H BOND ENGR.

JAMES STERLING }
CHARLES BURGELT } COMMISSIONERS
WILLIAM R FULLERTON }

53

54



3188 Mr. O'CONOR: We object to that.

The COURT: I think I will overrule the objection.

Whereupon an adjournment was taken to nine o'clock
November 27, 1912.

3189

November 27, 1912, 9:00 A. M.

Court met pursuant to adjournment.

MICHAEL COWAN, a witness for the defendant, being sworn,
testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Michael Cowan, I live in Joliet. I formerly
was a boat man. I have had about four years experience
on the Illinois River between St. Louis and Chicago in the
3190 position of Captain. In a general way the boats which I
have run on the Illinois River have been the Canal Steam-
er Niagara, the Peerless and the Imperial.

I am familiar with the whole stream and am acquainted
a little around Lockport. I know the Bear Trap Dam
and I am acquainted with the Desplaines River above
that point about as far as Willow Springs, 16 miles above
Lockport. Before 1900, the Desplaines River, I have seen
it so you could walk across it in places in Lemont there.
In some places it would be seven or eight feet deep and
some places would be a foot of water and some places you
3191 could walk across, maybe six inches of water. In the
last eight or ten years I have seen the same stretch above
the Sanitary District Dam and there has been somewhere
in the neighborhood of about two feet of water on account
of the drainage around there through the country putting
it into the river, digging ditches and one thing and an-
other and draining most of it.

The Sanitary District water enters the Desplaines River at Joliet and then the Desplaines River flows through the City of Joliet. Before the opening of the Sanitary District channel the Desplaines River where it flows through the City of Joliet, I should judge was 350 or 375 3192 feet wide. It is not that wide now. They have built a wall between the river and the canal and that leaves the Desplaines River in the narrower portions of Joliet 220 or 225 feet wide. The walls are 15 or 16 feet high. The 3193 river passes between the walls carrying the natural flow and the water from the drainage.

3194 I know the controlling works, have been over there six or seven times since they were opened. There was water flowing over the dam. The last time I was there it looked to me to be only four or five inches going over, something like that.

3195 In the narrow places in the river which I have described there is maybe two feet or a foot and a half of water. The current is about a mile to two miles an hour. The water runs right down through the Desplaines River into the Illinois River. The Illinois River is formed by the Desplaines, the Kankakee and the Du Page. The Du Page comes in about a couple of miles below Channahon, a couple of miles between that and the Kankakee. The Du Page River empties into the Desplaines and then goes into the Illinois River. The Du Page empties into the Desplaines River I should say about two miles and a half this side of the head of the Illinois River. They all go into the Illinois River there.

Where I have seen the Du Page River, it is quite a large river, that is through Channahon; a couple of feet wide in some places and others it ain't over 75 or 50 feet.

I have seen where the Desplaines and Kankakee unite.
3197 The Kankakee is a very large river, measures about four or five hundred feet wide at the head of the Illinois

River. The Kankakee River is a good deal larger than the Desplaines River and the two rivers where they come into the head of the Illinois River, they narrow up pretty narrow; I don't believe they are over 150 feet wide. I couldn't tell how deep they are at that point, looks to be four or five feet deep along there. Just below where the Illinois River is formed at times it is two or three feet deep in places.

3198 When the Sanitary District was opened I was down at Henry, Illinois. I looked to see if I could see the Chicago
3199 water in there. I continued to look for months after but did not observe a particle of difference whatsoever. No change in the river.

I have known the Illinois River before 1900 and since.

The following day after they let the water in I noticed the Illinois River cleaner and clearer than any time before or since. That is I could see down in the water farther. Before 1900, at a low stage I noticed, two or three
3200 years before they let the drainage in, that the Illinois River had a little more water in it. Since 1900, with reference to the level of the river at low water, as compared with it before I have noticed a difference of about five or six inches. I notice there is more current now than at the time before the drainage was in. I should judge present current at medium stage of water is a half or three-quarters of a mile or a mile an hour. It is a mile faster now.
3201 The current now is maybe a mile and a half or two miles an hour.

Cross-Examination by Mr. O'Connor.

I think the water is running about twice as fast as it did prior to 1900. The way I look at it they have got it diked up and narrowed up and the railroads have filled it in here and there and caused this current to be stronger and more water going in from the drainage all along down the

Illinois River. I should think the drainage down south of
 3202 the Henry Dam, farther down than the Henry Dam,
 would affect the Illinois River at La Salle some. The
 Henry Dam I think is seven or eight feet high. There is
 another dam about Copperas Creek that holds the water
 back so there isn't seven or eight feet fall.

3203 Henry Dam from the bottom to the top on the lower side
 I should judge is six or seven feet, somewhere in there.
 I am giving my best judgment. The width of the crest of
 3204 the dam is five or six hundred feet.

I am acquainted with Captain Donovan. I have known
 him 25 or 30 years.

With reference to my testimony in this law suit my
 attention was first called to these matters yesterday. They
 3205 asked me what I knew and I told them as near as I could,
 but yesterday was the first time that anything was ever
 said to me that would require me to fix anything in detail
 as to what I have testified. We talked it over among our-
 selves.

Lemont is the first place I ever walked across the Des-
 plaines River. It is about 13 miles from Joliet. I was
 up the Desplaines River about a year ago, it was along in
 the fall. The water was higher then than in the summer
 time.

3206 I have seen the ditches dug out there that they are put-
 ting in around there. Nothing was said to me yesterday
 on the subject of drainage ditches.

I have seen the water low at Lemont in 1903, but not as
 3207 low as I had seen it before that. At Lemont the river is
 about 150 feet wide. I have seen it after that. I have
 seen it here last summer around Lockport. Last summer
 was not an extra dry summer. Some places we had as
 much rain as we ordinarily do and some places we did
 3208 not. I think the water was about the same last year dur-
 ing the dry months that it has been this year or in the

years 1909 or 1910. I think the Desplaines River is a foot and a half to two feet higher at a low water stage.

3209 I don't know whether prior to that time I testified about there was a rain. I noticed that there was more water in the river than at any time I had seen it before. The Sanitary District people narrowed the river through Joliet for about half a mile. Before that time it was 350 or 360 feet wide. After they got through it was 220 to 225 3210-13 feet wide. Where the Sanitary District constructed these retaining walls it is not as deep now. The stream 3214 was deeper. He asked me how much water there was in the drainage ditch and I told him two feet or two feet and a half. There is more water coming down the Desplaines River. I think there is more water coming down 3215 the river now than there was before.

3216 I never took any measurements of the Sanitary District at Lockport. The Bear Trap Dam might be 100 feet or 3217 200 feet, I am simply giving my estimate. I would not want to bind myself within 50 feet. The last time I saw it was two or three years ago. I don't remember the 3218 month. I was over there several times after it was in operation to see it running and look around up there. The largest amount of water I ever saw flowing over that dam was in the neighborhood of six or seven inches of water, 3219 along in there. I don't know the number of cubic feet. I don't know the number of cubic feet that two and a half feet of water passing over would be. I don't think I ever saw a foot of water flowing over the dam. I have seen water leaving the Sanitary District at the power house, but I think that was about two years ago.

Where the Sanitary District water and the Desplaines flow together about a mile below the power house, the 3220 width of the stream is about 300 to 350 feet. I don't 3221 know the quantity of water flowing over the dam or the amount of water flowing in the Desplaines River. I think

the Desplaines River is flowing pretty near as much as the drainage is, that is flowing as much water. That is
 3222 my best judgment. I never took any gauge measurements to determine that or determine whether the Kankakee has increased over the flow prior to 1900.

At the junction of the Kankakee River and Desplaines the river is four or five hundred feet wide. I saw it last summer in July. At that time I don't know how much
 3223 water was going over the Bear Trap Dam.

At Henry I have noticed a difference of four or five inches. There has not been much of an increase. I noticed the river as I said two or three years before the drainage was let in and we had a little more water. There was maybe three or four inches more water then.
 3224 I will tell you how I used to do this in low water. We used to load those boats with what we could get down the river safely with and not get aground, and the place we used to load, as Henry or Chillicothe, or anywhere we loaded, we used to mark on the spiles to keep tab on the water, to see if it was raising or falling, to see how much water was on the bars and how we could load for it. If there was five feet of water we would load four feet and a half or four feet eight; have two or three inches to spare. And in doing that we noticed we could load two or three inches deeper before the drainage was let in, on account of the river holding up and of course we didn't know exactly what done it at the time, but it was on account of this drainage coming in. We loaded the barges at Henry, Peru, Lacon and Hennepin. We loaded about the same
 3225 since 1900 as before. Before 1900, we used to load our boats and go over those bars in water two or three inches deeper, but since the drainage is in I should say we have got maybe four or five inches more. There is a difference of a few inches. I judge by the bars at Henry, Pekin, and along down that way. The bars are not located at any

one certain place. There is very little change in them. They are sand bars. High water does not affect them.

3226 The increased current I suppose in the last few years has kept them out a little bit more. It keeps the channel cleaned out more. We can tell whether the increase in the water is due to the fact these sandbars are swept away because when we get down to a certain stage we measure, going across these bars, take a stick and go along and measure; have marks up to six feet. I have done that. From my observation during all the time from 1900, I have noticed an increase in the general stand of the
3227 river; I should say about six or seven inches, something like that.

I don't know when I first noticed the Chicago water after the drainage was turned in. The way I know the water was turned in there was some fellow there in Henry showing people down there about the Chicago water, 24 hours after it was turned in, and I went up on the bridge where they were talking and this fellow was preaching that you could see the Chicago water and I said how long since it was put in and he said 24 hours, and I said the water couldn't get down there that quick. After the Chicago water was turned in I was waiting to see it and it was two or three months, along in the summer, before I noticed it. I could tell it was Chicago water because it
3228 cleared the river up. Prior to that time the river was dirty. Maybe it was along in May or June. It was turned in in January.

The man that I was talking about was talking in January at Henry. I noticed the effect some time in June or July.

3229 The way I looked at it there, I had some wires in a wheel, the propeller wheel, between the bearing and the wheel, and it binds the engine. And I says to the engineer I had better get a skiff and we will go down there

and see if we can pull that wire out of there. And going down the river, something I never seen since the drainage was in or before, I could see the shaft about 18 inches in water and this wire in there and we took it out and I said, "There is the Chicago water. There is the lake water for you. It is clear." I knew it was Lake Michigan water.

The point where our boat was standing in the river was
 3230 about eight feet deep. I could not tell you what percentage of the water was Chicago water. I could not tell you what percentage of Lake Michigan water it takes when you put it in the Illinois River to make the water look like Lake Michigan. I could not say whether it would be 10 or 20 or 50 per cent. I could not tell you whether the change
 3231 in condition was confined to the point where I made the observation. I could not tell you whether it was peculiar to the ten square feet of water I saw. I would not say it was. I would think that was a general condition existing.
 3232 I cannot answer the question how much percentage it would take.

3233 I don't know anything about the spillway at Lyons except what I have heard. Not knowing anything about
 3234 the spillway at Lyons only just what I see around Lemont and Lockport, those ditches going in there, I should judge maybe cause that Desplaines River and the water to be a foot and a half or two feet. I don't know anything about
 3235 the amount of water coming from the spillway and only know what is carried in by the tile drains as I look at the river. I don't know the percentage of increase. I am only in a position to say where the increase of the Desplaines
 3236 River comes from as I have seen the river. I had no percentages. I know it is two feet or two and a half more water in it during low water. I don't know where it comes from, only some of those ditches along there. I think there is two feet or two and a half feet more water in the

Desplaines River today at low water mark than there was during the year 1900, at low water. I don't mean inches.

They used to run boats years ago on the Desplaines to Joliet. They do it now on part of it.

3237 Prior to the turning in of the water from the Sanitary District the speed of the river was about a mile an hour in low water. I should judge now it is two miles. I suppose narrowing it and everything like that gives it more current, being so much stronger would flow through with a strong current, and those ditches, and narrowing it.

3238 The fact the channel is narrow at Peru would tend to back the water up along that land here, along that land that lies above Peru. The river has been narrow at Peru

3239 within the past ten or twelve years. The "Q" railroad put in a lot of stuff there. I could not tell when. I have seen them putting dirt in there. About eight or nine

3240 years ago I seen them putting it in. Put it all along shore, put the dirt out in the river, dumped it down in the river. I couldn't tell you exactly how much the river was narrowed at Peru eight or nine years ago, exactly how much it was, but I have seen the stuff rolled down the river there. I have been unloading lumber there just above the bridge.

Where the bridge crosses the river it is 300, maybe 400 feet wide. Where the Shippingsport bridge crosses the river in low water I should judge it is four or five hundred
3241 feet wide. I don't remember the old bridge that crossed the Illinois River at Shippingsport. The bridge at the present time I know, I put stone around the abutments there where it was washed out; it was 16 or 17 years ago,
3242 during low water. I don't remember the piling along there that used to stick up above the surface of the water a foot or two feet and a half. I went up there with a boat and I was notified to keep away from some piling that was in there. I have a canal boat. At the time they put

the bridge across there for the "Q" I boated some lumber from Chicago up there. I never was up around that way with a boat, with a big boat before, and a man came to me and told me which way to go. Of course I had an idea anyhow from the water, but he told me where to keep away, to keep over on, I believe the right hand side, what
 3243 we call the starboard side going up. I did not observe any piling sticking above the surface of the water prior to 1900.

I made my calculations as to the velocity up the river at places there at Peru. Peru and anywhere that the river is narrowed up to have more current. I made observations at Peru, Illinois, and anywhere along down near the mouth of the Illinois River. I should say there is more
 3244 current. There is a greater body of water. My opinion is the current in the Illinois River at Peru is greater than it was before 1900 and other places where it is narrowed up the same way. Where the width is about the same the conditions generally are about the same.

CAPTAIN WILLIAM H. WALLACE, a witness for the defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is William H. Wallace. I reside at Henry, Illinois. My business is boating, managing a line of boats on the Chicago River, Illinois and Michigan Canal, Illinois River and Mississippi River. Have been engaged in the boating business since I was old enough to work. I am now 54 years old. I have been a master since 1880. I have seen a good deal of the Illinois River in that length of time.

I am acquainted at Lockport. I have known the Des-

plaines River at Lockport for a considerable time. I
3246 know the location of the Sanitary District works.

Prior to 1900 in the Desplaines River in the summer there was not very much water in it, very shallow. At the same point there has been a difference since 1900, there is more water up there. I never measured it, but looking at it I should judge it is two feet higher.

3247 When I have seen the Bear Trap Dam there would be four or five inches, sometimes a very little going over, and some going out of the gates. It went into the Desplaines River, I saw where it entered. It goes down to Joliet and into the Desplaines River.

3248 I have seen the Desplaines River in the narrow sections in Joliet. Before 1900 the Desplaines River was where the Illinois and Michigan Canal is. The Canal Company put in dams and made pools. That was in part of their canal through Joliet, they flowed together. The canal and river were afterwards separated by a coffer dam or crib. After they were separated it left the Desplaines River about 200 feet or a little better, wide in Joliet. Since that time I have seen the Sanitary District's water and the natural water of the Desplaines flowing through that channel through Joliet in those narrow portions. It is not very deep, probably two or three feet. It is very shallow, you can see it jumping over the rocks. Couple of miles an hour flow.

3249 They meet the waters in the Kankakee 16 miles below Joliet and that forms the Illinois. I have been at the meeting place since 1900. The Kankakee is a good big wide stream, 200 or maybe 300 feet wide, before it comes in to form the Illinois. The Desplaines is about half the width of the Kankakee. When they come together they make a stream of four or five or six hundred feet, I don't
3250 know how deep the water is in the Illinois across the stream just below where they come together.

I have sailed the Chicago and Illinois Rivers, the I. & M. Canal, the Hennepin Canal and the Mississippi River. I have sailed on the Illinois River from La Salle to the mouth. Made two or three hundred trips. I observed the Illinois River before 1900 and since.

I heard of the opening of the Sanitary District. The night the water was turned in, I was in Joliet. I remained there for four or five days and then went to Henry and
 3251 observed the Illinois River upon that occasion at Henry. I had a number of boats lying at Henry loading with grain and I went down after four or five days to see how they were getting along. I looked around to see how much the water was raised. I couldn't notice anything to speak of.

Since 1900 I have seen the water lower in the lower end
 3252 of the Illinois River than I did in the last 25 years. I have observed in the upper portion of the river that there is a great deal more current than there used to be. It is probably twice as fast as it used to be, or faster. The current was not scarcely any current in the olden times in the pools above the two dams, the Copperas Creek and the Henry. We call the pools of the two dams where the water is backed up by the Copperas Creek and the Henry Dam. Since then there has been a great deal more current, a mile an hour. There was scarcely any before. The water was backed up and almost stand. In the narrower
 3253 portions of the stream where the banks came closer together, there is more current now than there was before. At the Peoria narrows, the Peoria bridge probably a mile and a half. I have noticed that at low water stages since 1900 there is a little more water. In very low times there is I should judge about a foot.

3254 I have had an opportunity to observe the effect of high water in the Mississippi River upon the Illinois River. I have seen the water backed to Havana. Havana is 180

miles above the mouth of the Illinois River where it empties into the Mississippi.

Cross-Examination by Mr. Chipperfield.

There has always been high water on the Mississippi River at different seasons, different years. My acquaintance with the Illinois River is somewhat intimate and springs from years of contact with the river in and around La Salle. I have never been above the bridge in the river at La Salle. I never saw the Fred Swain come from La Salle to Ottawa, running excursions up and down the river prior to 1900. I never knew that. I used to be acquainted with the Fred Swain, but she is burned up. There isn't any now. I knew the Fred Swain before it was burned. I rode on it probably 15 or 20 times a year. The Swains had two or three boats that were sister boats to the Fred Swain. The names of those boats were Fred Swain, Percy, Verne and Borealis Rex. The Borealis Rex used to run between La Salle and Peoria. The boats were of similar construction, some side-wheelers and some stern-wheelers. Practically all the same size within a few tons. The smokestack of the Fred Swain projected higher than the top of the pilot box four or five feet. I don't know that the Fred Swain came up the Illinois River prior to the year 1900 in the summer time under the "Q" bridge. She could not do it unless the water was pretty low. In order to come under the bridge without taking the smokestack down the water would have to be awful low for it to go under any time. I don't know whether they could without taking the smokestack down. I don't know whether they could then or not. Since 1901 the Fred Swain could not get under the "Q" bridge even by taking down the smokestack during low water. The bridge is too low. It is not any lower now than 1900. I never knew the bridge to be lowered or any change in it.

You understood me to say just a moment before this last question that from my knowledge of the river and of the "Q" bridge crossing the Illinois River south of La Salle that the Fred Swain with the funnels down could not pass under the bridge because the bridge is too low. I 3262 said the bridge had not been lowered. Could not pass under the bridge because it was not built high enough.

3263 I did not say how much higher the Illinois River is in and along La Salle and along that bridge than it was prior to 1900. I don't know. I have an opinion. I base my measurements on the Henry Dam where I lived, about a foot at Henry, would think about a foot difference in elevation at the bridge in the Illinois River near La Salle. 3264 I came to that conclusion because it was a foot higher at Henry.

The river at the "Q" bridge is about the same width as it is at Henry, 700 or 800 feet. The increase in the rise of the river would be about the same in amount at Henry as it is at La Salle along the "Q" bridge.

3265 I have taken no part in any movement of boatmen to compel the "Q" railroad to put in a turn bridge there. I have heard of it.

I was at Joliet when the water was turned in. The 3266 Sanitary District channel in 1900 was just like it is now. They have cleaned out a few bridge piers and a few little obstructions. I am pretty familiar with what they have done. They have cleaned out the bridge piers so we could navigate the channel at Joliet and a few other little things of that kind.

The flow varied in 1900. It was on and off until the gov- 3267 ernment took hold and made them put the current through the Chicago River at a mile and a quarter an hour. I do not know that the flow in 1900 in view of the fact the Sanitary District was not completed was sometimes on and off.

Four or five days after the channel was opened I went to Henry. I had some boats loading there. The river at Henry was higher than the low water; there was probably two or three feet rise January, 1900. I could not notice any change while I was waiting ten days. There
 3268 might have been three or four inches change. There was a little change. I didn't see any difference in the color of
 3269 the water at that time. I noticed it the next year. The condition of the water was that there was about a three foot rise and there was four or five inches after the water was turned in. It was the latter part of February, 1900, that I noticed by looking at the river, I could see it was cleaner, cleared up by the Lake Michigan water.

The river was inside its banks. It might have been up
 3270 towards the edge. The river was full. I first noticed it myself at Pekin. I don't know how deep the river was, my best judgment is ten feet. I thought it had been
 3271 cleared up, I thought it looked kind of blue. I don't know Lake Michigan water always when I see it. I know when the Illinois River is flowing Lake Michigan water in such quantities it looks blue, that the water comes from the Sanitary District. At Pekin the river is probably 1,500 feet wide. You could just see a blue cast on top. You could not look into it at all. I cannot tell what per-
 3272 centage of Lake Michigan water it would take. It was a mathematical problem. How am I going to tell whether it was 20 per cent. or not. I haven't any idea.

Pekin is about 145 miles from the Bear Trap Dam. The water would have to travel that far. I noticed that blue cast was all gone shortly after I first noticed it, I can't tell the number of days. It might have been a week or two
 3274 weeks. The blue water disappeared just as soon as it commenced to run. It will disappear in twenty minutes after a rain storm without any rise in the river. The rain will wash the yellow clay off the hills and the water will

change its color. Never noticed how long before it gets back to blue. Saw the blue of the lake at subsequent times.
 3275 Often saw it before rain storms when it has time to settle and clear up. I don't think I noticed it this year. We have had a good many rains. I saw it in the Drainage Canal Sunday. I last noticed it in the Illinois River last
 3276 winter, about February, 1912, at Henry. The river is 12 feet deep and seven to eight hundred feet wide. The water looked blue on top.

The waters from Lake Michigan and the Kankakee and Desplaines Rivers come together. They all get stirred
 3277 up together. If the larger amount of water is dirty water the whole stream is going to show dirty. It will for a while but the water will purify itself running. I have no idea of the percentage. I don't know how much water comes into this valley from the mouth of the Kan-
 3278 kakee. The Kankakee water is not dirty in dry times. It is clear in February if there hasn't been any storms. We used to fill our water barrel out of the Kankakee River for drinking purposes about 30 years ago in the summer
 3279 time. We did not fill it out of the Kankakee River in February because we did not do any boating in February. We used to go up the Kankakee feeder. The Kankakee river is a clear stream. It is clear outside of flood times. February, 1912, it was a moderate height, it rose some. The Desplaines River is not clear water where it mingles with the Sanitary District water. Before it is clear. The
 3280 Chicago sewage dirties it up. The Chicago water at the Bear Trap Dam discolors the Desplaines River, it is a different color.

3281 I never saw a foot and a half of water going over the Bear Trap Dam. The most I ever saw was four or five inches. You could see the crest through the water. I never saw more than four or five inches. I never was at
 3282 the dam more than two or three times. I saw it shortly

after 1900. I cannot tell just when, within a year or two.

3283 Always saw the crest of the dam. There isn't any water flowing over the dam at the present time, they let it out at the power house.

I had no knowledge as to whether measurements are taken of the flow at the power house. Exhibit "20" is the controlling works. I know there was no water coming over the dam. I went by there on Sunday and the dam was up over the water. They were letting the water out at the power house $1\frac{7}{8}$ miles below the controlling works. They don't use those gates at all. They let the water out of this channel at the power house.

3284-86 In my judgment the width of the Bear Trap Dam is 300 feet. If there was a dam 300 feet wide and there was a foot and seven inches of water flowing over it at the rate of three miles the hour, I would not want to undertake to figure the number of cubic feet passing over the dam a minute.

3287 I have no idea how much is coming out of the Sanitary District at the present time. I always understood there was a means of measuring it at these different power houses to determine that fact. I made my calculations
3288 as to the increased height of the river by certain points where our boats run. The increase has been uniform. I should say the rise in the level of the Illinois River has been practically uniform.

The river rises faster where it is narrower, where it is dammed up. There is more current since 1900, twice as much as there used to be. I should say there was
3289 twice as much current at the Peru bridge. I think the bridge is about 300 feet wide. The current depends on the width a great deal. If the width is approximately the same it would flow just the same one place as another. The zig-zag irregular condition of the stream would not have anything to do with it if it is as wide. The banks

wash out and would send the water around twice as fast, wouldn't it? The edge of the stream would have to run against the bank and come back in that fashion. The edge would be all that would touch the bank. The water might back the other water up a little, not much. Would not think that would have much effect on the actual velocity of current itself.

3291 Went through Lockport last Sunday because I am operating boats between Chicago and Davenport. I took a boat from Joliet to Chicago last Sunday. I never worked for the Sanitary District at Lockport taking any measurements of the flow or anything of that kind.

CHARLES KERCHEVAL, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Charles E. Kercheval. I reside in Joliet. I am a contractor at the present time. I have been engaged in the building business about two years. Before that I was employed by the Economy Light and Power Company for three and one-half years, securing right of way.

During the time I have lived in Joliet I have become acquainted with the Desplaines River. I knew it before the Sanitary District was opened for five or six miles above the controlling works on the west side most of the way from Willow Springs. I think the channel of the Desplaines River then is where the Sanitary District channel is now. There is a diversion of the river there.

During eight or ten years before the Sanitary District
3293 was opened there was always quite an amount of water flowing through the Desplaines River, but not as much as there is at present. Since the Sanitary District has

been opened the Desplaines River varies somewhat. I think there is more water than there was a few years ago. I don't know as I could state exactly. My judgment is from six inches to a foot more water than was flowing before.

The Desplaines River flows through Joliet. I am acquainted with the narrower portions of the stream. The Illinois and Michigan Canal before the Sanitary District work was completed was in the west part of the basin. Now the Desplaines River does not flow with the Illinois and Michigan Canal; it is divided by a retaining
 3294 wall on the east side of the canal bank. The distance between the retaining walls of the channel proper is in the neighborhood of 200 feet, perhaps a little more. The Desplaines River and the Sanitary District water flows through that channel. The water on an average is in the neighborhood of three feet deep at that point at ordinary low stages. I cannot say how fast it flows. I
 3295 should say two miles to two and a half an hour. I know where the Desplaines unites with the Kankakee near Dresden Heights; we have been there a good many times since 1900. I have seen the Kankakee River as the Desplaines joins it. The Kankakee River is about the same width as the Illinois River; I couldn't state how wide The Kankakee was, the largest stream as it and the Desplaines came together, I should say twice as large.
 3296 There is a place in the Illinois River just below where it is formed by the Kankakee, Desplaines and DuPage, where it is not very deep, places where it is not more than four or five feet deep. I have not observed any difference in the level of the Illinois River at that point since 1900. I am only acquainted with the Illinois River from Morris north towards Joliet.

3297

Cross-Examination by Mr. O'Connor.

I possibly know that there has been millions of acres drained in Indiana and up in Wisconsin that have been brought down through the Iroquois River, the Kankakee and the Desplaines, that have increased the height of the river there below Kankakee. I never made any notation as to the increase or rise. I have been able to make an estimate of the increase in the Desplaines River along Joliet, the past ten years. There is more water flowing there than there was. In all seasons of the year there is more water. The only reason I could give for that was on account of the farmers drainage that has been going on, that flows into the tributaries of the Desplaines River.

3298 I know about the spillway. I have been there but I don't know where it goes. I don't know what it was built for.

I. W. RICHARDS, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is I. W. Richards. I reside at Joliet. I have no business, I am retired. I was a farmer up to about ten years ago, and have resided in Joliet ten years. Before that time my home was just outside of the city.

I have been acquainted with the Desplaines River for some years. Since 1866.

3299 I know where the controlling works of the Sanitary District are. I know where Spring and Hickory Creeks are. In 1902, I saw high water in Hickory and Spring Creeks. That high water was in the month of June, 1902. It was so high and it came down with such a body that it ran right down through a part of the City of Joliet. It

ran south of the high school building which is on fairly high ground, and the current was so swift there a man could not walk through simply to cross from the high school building to the south. And just below there on the corner there was a water tank that stood up high enough that a horse could drink out of it without being unchecked, and it took that tank away and also took the
 3300 stone sidewalk away, carried it right away. There were two horses drowned. I saw the flood in the afternoon and in crossing on Cass street in a buggy you had to lift your feet up to cross the Alton Railroad in the afternoon on that day. That flood came up during the night. There was no water in the streets the night before and the next morning it was there. I don't think there were any street cars run across that crossing that day, probably not for two days, I don't remember exactly.

3301 The water came from Hickory and Spring Creeks from the east. Above the point where the water came from there was no connection with the Sanitary District.

The Desplaines River for ten years before the Sanitary District channel was opened a part of the time was a very sluggish and slow stream before the river was diverged, and in places where it was diverged for the channel, but since then it seems there is more water coming down than there was before. I would think there was twice as much water. I used to cross that stream in
 3302 1883, '84 and '85, about three or four times a day. Since then I think it has doubled.

I have observed the Bear Trap Dam. I have seen it on an average twice a year. The last time I saw the Bear Trap Dam there wasn't an ounce going over but before that I should judge a foot, probably about a foot of water. After it flowed over the dam it went into the basin which was connected with the Desplaines River.

The Desplaines River flows through Joliet. It flows

- 3303 between the retaining walls. The Desplaines River at the Jefferson street bridge would be about 200 feet wide. The waters which go through there are the waters of the Desplaines, the tributaries of the Desplaines and the Chicago drainage. I never measured the water. I cross the Jefferson street bridge there probably four times a day the year around and there are certain marks that I am going by. I should think it was an average of three feet and a half. The current flows about four miles an hour in my judgment. It is quite rapid.
- 3304 The Illinois River is formed at Dresden Islands. I have been there probably not more than half a dozen times. I have seen the Kankakee and Desplaines Rivers flowing into it since 1900. I have seen where the Kankakee and Desplaines Rivers come together. At the mouth of the Kankakee I have seen what would appear to be more water coming from the Kankakee than that which went down the Desplaines. After they come together since 1900, I have not noticed any difference in
- 3305 the level of the Illinois River than it was before 1900. I don't know how deep it is.

Cross-Examination by Mr. O'Connor.

- I cannot answer the question why it does not show at the Kankakee that the Desplaines is flowing twice as much water as it did before 1900, but you can go down to Dresden Heights and watch either one of these streams and the Kankakee seems to be two inches higher, so much so that it drives the other back. It drives the Desplaines River right to one side, so much difference. The Kankakee comes into the Illinois quite a way out-
- 3306 side of Joliet. If the flow in the Desplaines River is doubled it would naturally seem there ought to be some increase. You would have to make some displacement in

the water if it was doubled. It would naturally make a larger body of water if the Desplaines flowed twice the amount of water that it did prior to 1909 and you add to that flow the water from the Sanitary District.

3307 I would think that the Desplaines, DuPage and their tributaries, with Hickory Creek and Spring Creek, with all the other small runs that come in from Lemont, would furnish at least half the flow that comes down the channel at the present time. If the flow doubled it might have some effect upon the Kankakee River, but to watch it
 3308 closely when you are down at Dresden Heights the Kankakee seems higher, so much so that it drives the other flow to one side down there where they join to make the Illinois. I don't know how much higher. It looks now as if it must be two or three or four inches higher. I did not measure the Kankakee. I am not competent to say. I could not say whether there is four feet
 3309 of water in it or not. If there were three feet of water in it then and it was four feet higher than the water coming from the Desplaines at that point, then there would be two feet eight inches in the Desplaines. I don't know how wide the Desplaines River is where it meets the Kankakee or how wide both rivers are after they come together. If the channel of the Illinois was the same size as the channel of the Desplaines and the channel of the Kankakee, and the Kankakee was flowing three feet of water and the Desplaines was flowing two feet
 3310 eight inches of water, it would not show in the Illinois River if it widened out at the mouth. If it was narrow it would show. The Illinois River did not appear to be narrower. I think it was a little wider after they come
 3311 together. It was not very much wider than the Kankakee.

I don't know how deep the water is in the Illinois River after these two rivers come together. I worked

for the Sanitary District when they put their channel down through Joliet. I was on the witness stand two or three times. I also placed values on the property that 3312 they were in litigation about. Testified for them two or three times before. Never did any physical labor for them. I never took any readings at Lockport. The greatest amount of water I ever saw going over the Bear Trap Dam was a foot or two feet. I saw a foot at different times, two or three times. I have not been there very many times. I did not go over there for that purpose, I went there with some friends simply to show the 3313 dam and did not make any notations. I could see the crest of the dam through the water. You could stand right up close to it and see the dam through the water.

In the Desplaines at low water to-day as compared 3314 with the Desplaines prior to 1900, I think there is a difference of over a few inches. It is simply a matter of observation. Never made any record as to the flowage of the Bear Trap Dam.

Where the Desplaines joins the Kankakee it runs a little to the southwest and the Kankakee comes in from the southeast. It might strike it at about a right angle; I couldn't be positive as to that. There might be a slight bend just before it enters the Kankakee.

Mr. CHIPERFIELD: Now, I desire to offer in evidence a certified copy by the Secretary of State of the State of Illinois of an order from the governor, John R. Tanner, to the Board of Sanitary Trustees of Chicago, dated January 17, 1900, permitting the opening of this channel.

Whereupon said document was received in evidence by the court, marked Exhibit "59" and is in words and figures following, to-wit:

3316

EXHIBIT "59."

"STATE OF ILLINOIS,
DEPARTMENT OF STATE.

JAMES A. ROSE

SECRETARY OF STATE

To All Whom These Presents Shall Come, Greeting:

I, James A. Rose, Secretary of State, of the State of Illinois, do hereby certify that the following and hereto attached is a true copy of a letterpress copy of a communication from John R. Tanner, Governor, to the Board of Sanitary Trustees, Chicago Illinois, dated January 17, 1900, the original of which is now on file and a matter of record in this office.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the great seal of state.

Done at the City of Springfield, this 2nd day of December, A. D. 1908.

(Signed) JAMES A. ROSE,
Secretary of State.

[SEAL]

(OFFICIAL LETTERS No. 5)

January 17th, 1900.

*To the Board of Sanitary Trustees,
Chicago, Ill.*

(Confirming telegram of this date)

GENTLEMEN:

The Board of Commissioners heretofore appointed by the undersigned to make an examination and survey of the Chicago River, and of the Chicago Drainage chan-
nel, to determine whether the said channel has been
completed in accordance with the requirements of Sec-
tion 23 of the Act entitled, 'An Act to create Sanitary
Districts, and to remove obstructions in the Desplaines

and Illinois Rivers,' approved May 29, 1889, in force July 1, 1889, having certified to me that said channel has been and is now completed in accordance with the law creating said Sanitary Districts.

NOW THEREFORE I, JOHN R. TANNER, GOVERNOR OF THE STATE OF ILLINOIS, do hereby authorize and direct you, the said Board of Sanitary Trustees, to open and let into the said channel, the waters of Lake Michigan and of the Chicago River, and the sewerage of said Sanitary District, and to use and employ said channel for all the uses and purposes for which said channel was constructed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this Seventeenth Day of January, A. D. Nineteen Hundred.

JOHN R. TANNER,
Governor."

3318 Mr. CHIPERFIELD: I desire to offer in evidence a permit issued by the Honorable Russell A. Alger, Secretary of War, approved by General John M. Wilson, Brigadier General Chief Engineers United States Army, dated May 8, 1899, authorizing the opening of the Sanitary Canal and regulating the amount that might be flowed. And in that same condition I desire to take leave to withdraw the original on substituting a compared copy.

Whereupon said document was received in evidence by the court, marked Exhibit "60" and is in words and figures following, to-wit:

3319

EXHIBIT "60."

WHEREAS, by Section 10, of an Act of Congress, approved March 3, 1899, entitled "An Act making Appropriations for the construction, repair and preservation of certain public works, on rivers and harbors, and for

other purposes," it is provided that it shall not be lawful to alter or modify the course, location, condition or capacity of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same;

AND WHEREAS, the Sanitary District of Chicago, a Municipal Corporation, organized under the laws of the State of Illinois, has constructed an artificial channel from Robey Street, Chicago, to Lockport, and has been heretofore granted permission by the Secretary of War to make certain improvements in the Chicago River, for the purpose of correcting and regulating the cross section of the river so as to secure a flowage capacity of 300,000 cubic feet per minute with a velocity of one and one quarter miles an hour, it being intended to connect the said artificial channel with the west fork of the south branch of Chicago river at Robey Street in the said city of Chicago;

AND WHEREAS, the said Sanitary District of Chicago has now applied to the Secretary of War for permission to divert the waters of the said Chicago River and cause them to flow into the said artificial channel at Robey Street as aforesaid;

AND WHEREAS, the said Sanitary District of Chicago 3320 represents that such movable dams and sluice gates as are necessary to, at all times, secure absolute and complete control of the volume and velocity of flow through the Chicago River have been constructed;

NOW THEREFORE, the Chief of Engineers having consented thereto, this is to certify that the Secretary of War hereby gives permission to the said Sanitary District of Chicago to open the channel constructed and cause the waters of Chicago River to flow into the same subject to the following conditions:

1. That it be distinctly understood that it is the intention of the Secretary of War to submit the questions connected with the work of the Sanitary District of Chicago to Congress for consideration and final action, and that this permit shall be subject to such action as may be taken by Congress.

2. That if, at any time, it becomes apparent that the current created by such drainage works in the south and main branches of Chicago River, be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its south branch.

3. That the Sanitary District of Chicago must assume all responsibility for the damages to property and navigation interests by reason of the introduction of a current in Chicago River.

3321 WITNESS my hand this 8th day of May, 1899.

(Signed) R. A. ALGER,

[SEAL]

Secretary of War.

(Signed) JOHN M. WILSON,

Brig. Gen'l Chf. of Engs.

U. S. A."

3322 Mr. CHIPERFIELD: I also desire to offer in evidence a communication from Major J. H. Willard, corps of engineers, United States Army, transmitting an order of the secretary of war of the United States modifying the permit given the Sanitary District of Chicago to open the artificial channel from Robey street, Chicago, to Lockport, Illinois, and causing the waters of the Chicago River to flow into the same, dated May 8, 1899. The order being the 9th day of April, 1901.

Whereupon said document was received in evidence by

the court, marked Exhibit 61, and is in words and figures following, to-wit:

3323

EXHIBIT 61.

Alex J. Jones, President Fred M. Blount, Treasurer
 William H. Baker, Vice President A. R. Porter, Clerk
 James Todd, Attorney
 Isham Randolph, Chief Engineer

Board of Trustees.

THE
 SANITARY DISTRICT
 OF CHICAGO
 Security Building.

William H. Baker
 Joseph C. Braden
 Zina R. Carter
 Frank X. Cloidt
 Alex J. Jones
 William Legner
 Thomas A. Smyth
 Thomas J. Webb
 Frank Wenter

CHICAGO, April 22, 1901.

*To the Honorable, the Board of Trustees of the Sanitary
 District of Chicago:*

GENTLEMEN:

I have the honor to transmit herewith a communication of Major J. H. Willard, Corps of Engineers, U. S. A., transmitting an order of the Secretary of War dated April 9, 1901, modifying and regulating the discharge of water from the Chicago River into the Drainage Canal so that the maximum flow shall not exceed 200,000 cubic feet of water per minute.

The order of the Secretary of War was received at nine o'clock A. M., Saturday, April 20, 1901, and I immediately instructed the Engineering Department of the District to comply with said order. I recommend that the correspondence and order herewith submitted, be printed in the Proceedings of the Board, and placed on

file as a part of the permanent records of the Sanitary District of Chicago.

Respectfully submitted,

(Signed.) ALEX J. JONES,
President.

3324 SUBJECT:

*Chicago and Calumet Harbors,
Illinois and Calumet Rivers,
Illinois and Mississippi Canal.*

UNITED STATES ENGINEER OFFICE,
1637 Indiana Avenue, P. O. Drawer 132.

CHICAGO, Ill., Apr. 19, 1901.

*Alex J. Jones, President,
Board of Trustees, Sanitary District of Chicago,
Security Building, Chicago, Ill.*

SIR:

I have the honor to enclose herewith, by order of the War Department, an order from the Secretary of War modifying the permit granted to the Sanitary District of Chicago to open an artificial channel from Robey street, Chicago, to Lockport, Ill., and cause the waters of Chicago River to flow into the same, dated May 8, 1899, and to respectfully request that receipt of same be acknowledged.

Very Respectfully,

(Signed.) J. H. WILLARD,
Major, Corps of Engineers, U. S. A.

(1 encl.)

Chicago River.

J. A. G. O.
(6353)

3325 WHEREAS, Under date of May 8, 1899, the secretary of war granted permission unto the Sanitary District of Chicago to open the artificial channel from Robey street, Chicago, to Lockport, and cause the waters of Chicago

River to flow into the same, upon the following condition, *inter alia*:

“2. That if, at any time, it becomes apparent that the current created by such drainage works in the South and Main Branches of Chicago River, be unreasonably obstructive to navigation or injurious to property, the secretary of war reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its South branch”:

AND WHEREAS, it is alleged by various commercial and navigation interests that the present discharge from the river into the Drainage Canal sometimes exceeds three hundred thousand (300,000) cubic feet per minute, causing a velocity of nearly three (3) miles per hour, which greatly endangers navigation, in the present condition of the river;

NOW THEREFORE, This is to certify that the secretary of war upon the recommendation of the chief of engineers, hereby directs said Sanitary District to regulate the discharge from the river into the Drainage Canal so that the maximum flow through the Chicago River and its South Branch shall not exceed two hundred thousand (200,000) cubic feet per minute.

3325 WITNESS my hand this 9th day of April, 1901.

(Signed.) ELIHU ROOT,

[SEAL.]

Secretary of War.

Which said order is endorsed upon the back as follows:

3326 “3232.”

(Also): “Office of the Secretary WAR DEPARTMENT, Apr. 6, 1901, 2560 of 1900/34.”

(Also): “Office, Chief of Engineers WAR DEPARTMENT, Apr. 13, 1901, 35242/54.”

(Also): "U. S. ENG'R OFFICE, Chicago, Ill. Received Apr. 19, 1901."

(Also): "Order of Secretary of War directing District to regulate flow of water from Chicago River into the Drainage Canal, presented to Board of Trustees received, printed and filed April 22, 1901.

A. R. PORTER,
Clerk."

Which said Exhibit 61 is endorsed upon the back as follows:

"Box 'A' FILE No. 5. Order from the Secretary of War regulating the flow of water in the Main Channel, dated April 9, 1901. Printed and Filed April 22, 1901. Page 7157 of the Proceedings."

3327 Mr. CHIPERFIELD: I also desire leave to offer in evidence a communication dated July 23, 1901, from Hon. Elihu Root, secretary of war, United States, regulating the flow of the Sanitary District Channel.

Whereupon said document was received in evidence by the court, marked Exhibit 62, and is in words and figures following, to-wit:

3328

EXHIBIT 62.

WAR DEPARTMENT,
Washington,

File No. 2,560 of 1900.

July 23, 1901.

SIR:

Referring to War Department order of April 9th last, restricting the flow of water through the Chicago River under War Department permit of May 8, 1899 to 200,000 cubic feet per minute, and replying to your letter of 15th instant, in which you request, for reasons stated, that the said order be amended to permit a flow of 300,000 *cubic feet* per minute between the hours of 4 P. M. and

twelve o'clock midnight, I beg to inform you that I have this day approved the modification last referred to, which approval will be subject to revocation by the Department in case the increase shall prove to be dangerous to navigation.

Very respectfully,

(Signed.) ELIHU ROOT,

Secretary of War.

Mr. Alexander J. Jones,

*President, Sanitary District of Chicago,
Chicago, Illinois.*

(Endorsed upon the back as follows):

"BOX 'A' FILE NO. 6. AMENDED ORDER from the SECRETARY OF WAR in reference to the flow of water through the Main Channel, dated July 23, 1901. Printed and Filed August 14, 1901. Page 7372 of the Proceedings."

3329 Said order bears upon the back thereof the following endorsement:

"War Department. Amended Order permitting a flow of 300,000 cubic feet per minute through Chicago River.

Presented to Board of Trustees, received, printed and filed, August 14, 1901.

L. C. LEGNER,

Acting Clerk."

3330 Mr. CHIPERFIELD: I also desire to offer in evidence a communication from William Cary Sanger, acting secretary of war of the United States, dated December 6, 1901, transmitting an order dated December 5, 1901, regulating the flow of the Sanitary District Channel.

Whereupon said document was received in evidence by the court, marked Exhibit 63, and is in words and figures following, to-wit:

3331

EXHIBIT 63.

WAR DEPARTMENT,
Washington.

File No. 2,560 of 1900.

December 6, 1901.

GENTLEMEN :

Referring to your letter of 16th ultimo, requesting, on behalf of the Sanitary District of Chicago, permission to increase the flow of water in the Chicago River from 200,000 cubic feet to 250,000 cubic feet per minute, from midnight to 4:00 P. M. daily, under authority previously granted by this Department, I have the honor to transmit herewith, for retention, an instrument granting the said Sanitary District of Chicago permission to regulate the discharge of water into the canal so that the maximum flow through the river shall not exceed 250,000 cubic feet per minute throughout the twenty-four hours of the day, subject to the conditions set forth in the said instrument.

Very respectfully,

(Signed.) WM. CARY SANGER,

Assistant Secretary of War.

THE BOARD OF TRUSTEES OF THE
SANITARY DISTRICT OF CHICAGO,
Security Building,
Chicago, Illinois.

(Inclosure: 2560-44 of 1900.)

J. A. G. O.

(6353)

3332

WHEREAS, under date of May 8, 1899, the Secretary of War granted permission unto the Sanitary District of Chicago to open the artificial channel from Robey street, Chicago, to Lockport, and cause the waters of Chicago River to flow into the same, upon the following condition, *inter alia*:

“2. That if, at any time it becomes apparent that the current created by such drainage works in the South and Main Branches of Chicago River, be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its South Branch”;

AND WHEREAS, the Secretary of War subsequently directed said Sanitary District of Chicago, to regulate the discharge of water into the Chicago Drainage Canal so that the maximum flow through the Chicago River shall not exceed 200,000 cubic feet per minute from midnight to 4 P. M., nor 300,000 cubic feet per minute from 4 P. M. to midnight;

AND WHEREAS, said Sanitary District of Chicago has applied to the Secretary of War for permission to increase the flow between midnight and 4 P. M. daily, to 250,000 cubic feet per minute; and the Chief of Engineers has recommended that the increase applied for be granted, but that the rate of flow from 4 P. M. to midnight be reduced to 250,000 cubic feet per minute so that the flow through the Chicago River shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day;

NOW THEREFORE, This is to certify that, in accordance with the recommendation of the Chief of Engineers, the Secretary of War hereby gives unto said Sanitary District of Chicago permission to regulate said discharge so that the maximum flow through the Chicago River shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day, upon the following conditions:

1. That this permission shall be in lieu of the present authorized rates of flow as stated above.
2. That the permission herein given shall be subject

to such modification as in the opinion of the Secretary of War the public interests may from time to time require.

3. That said Sanitary District of Chicago shall be responsible for all damages inflicted upon navigation interests by reason of the increase in flow herein authorized.

WITNESS, my hand this 5th day of December, 1901.

(Signed.) WM. CARY SANGER,
Assistant Secretary of War.

Which said order is endorsed upon the back as follows:

“Office of the Secretary WAR DEPARTMENT, Dec. 5, 1901, 2560 of 1900/44.”

3333 Endorsed upon the back as follows:

“Box ‘A’ FILE No. 7. Permit from the SECRETARY OF WAR regulating the flow of water in the river to 250,000 cubic feet per minute throughout the 24 hours of the day, dated December 5, 1901. Printed and filed December 11, 1901. Page 7521 of the Proceedings.”

Mr. CHIPERFIELD: I also desire to offer in evidence a
3334 communication dated July 31, 1908, by Robert Shaw Oliver, acting secretary of war of the United States, transmitting an order dated May 8, 1899, on the part of Russell A. Alger, secretary of war, and approved by John M. Wilson, Brig. Genl. chief of engineers, United States Army, regulating the flow of the Sanitary District of Chicago.

Whereupon said document was received in evidence by the court, marked Exhibit 64, and is in words and figures following, to-wit:

3335

EXHIBIT 64.

UNITED STATES OF AMERICA,
WAR DEPARTMENT.

WASHINGTON, July 31, 1908.

I HEREBY CERTIFY that the attached paper is a true copy of the original on file in the office of the Chief of Engineers, U. S. Army.

(Signed.) E. EVELETH WINSLOW,
Acting Chief of Engineers.

BE IT KNOWN that E. Eveleth Winslow, who signed the foregoing certificate, is the acting chief of engineers, and that to his attestation as such full faith and credit are and ought to be given.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the War Department to be affixed on this first day of August one thousand nine hundred and eight.

[SEAL.]

(Signed) ROBERT SHAW OLIVER,
Acting Secretary of War.

“WHEREAS, By Section 10 of an Act of Congress approved March 3, 1899, entitled ‘An Act Making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes,’ it is provided that it shall not be lawful to alter or modify the course, location, condition, or capacity of the channel of any navigable water of the United States unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same;

AND WHEREAS, the Sanitary District of Chicago, a municipal corporation organized under the laws of the State of Illinois, has constructed an artificial channel from Robey street, Chicago, to Lockport, and has been hereto-

for granted permission by the Secretary of War to make certain improvements in the Chicago River for the purpose of correcting and regulating the cross section of the river so as to secure a flowage capacity of 300,000 cubic feet per minute with a velocity of one and one-quarter miles an hour, it being intended to connect the said artificial channel with the west fork of the South Branch of Chicago River at Robey street in the said City of Chicago;

AND WHEREAS, the said Sanitary District of Chicago has now applied to the Secretary of War for permission to divert the waters of the said Chicago River and cause them to flow into the said artificial channel at Robey street as aforesaid;

AND WHEREAS, the said Sanitary District of Chicago represents that such movable dams and sluice gates as are necessary to, at all times, secure absolute and complete control of the volume and velocity of flow through the Chicago River have been constructed;

NOW THEREFORE, the Chief of Engineers having consented thereto, this is to certify that the Secretary of War hereby gives permission to the said Sanitary District of Chicago to open the channel constructed and cause the waters of Chicago River to flow into the same subject to the following conditions:

1. That it be distinctly understood that it is the intention of the Secretary of War to submit the questions connected with the work of the Sanitary District of Chicago to Congress for consideration and final action, and that this permit shall be subject to such action as may be taken by Congress.

2. That if, at any time, it become apparent that the current created by such drainage works in the South and Main Branches of Chicago River, be unreasonably obstructive to navigation or injurious to property, the Sec-

retary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its South Branch.

3. That the Sanitary District of Chicago must assume all responsibility for damages to property and navigation interests by reason of the introduction of a current in Chicago River.

Witness my hand this 8th day of May, 1899.

R. A. ALGER,
Secretary of War.

JOHN M. WILSON,
Brig. Genl. Chf. of Engs. U. S. A.
[SEAL.]

3338 Appearing on the back of which in pencil is the following:

“2638 $\frac{1}{2}$. Printed in proceedings of May 10, 1899, pgs. 5675 & 76.”

3339 Recess taken to 1:15 P. M., same day.

3340 November 27, 1912, 1:15 P. M.

MARTIN J. HOGAN, a witness for defendant, being sworn testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Martin J. Hogan. I reside at Chicago, Illinois. I am a police officer and pilot on a police boat. The police boat is a life saving boat for the purpose of rescue and protection of life and property on the Chicago River. I have been connected with the police department of the City of Chicago about fifteen years. I have been master of the present boat three years. I am a regularly licensed master. Before I went with the City

of Chicago I was pilot on a boat for the Chicago Edison Company, Commonwealth Edison Company for a few years, and for the Fisher Coal Company, a tug boat. I ran the tug boat Robert A. Dunham. I ran the steamer Imperial and I ran other boats and have lived on boats in former years; raised on boats along the canal and river.

I am perfectly familiar with the Chicago River. There is a north and south branch and then there is what we call the west fork of the south branch and a channel leading from the south branch to the entrance of the Drainage Canal. That is located at Robey street. It would be about Thirty-first street and Robey. The entrance to the canal is on the south branch.

3342 I am familiar with the point where the Chicago River and Lake Michigan meet. The river is approximately 500 feet wide at that point. The current is less than half a mile, it is hardly perceptible. I know where the Rush street bridge is located. It is very close to 200 feet wide and the current of the river at that point is very nearly a mile an hour.

I am acquainted with the Lake street bridge. I should judge that the width of the Chicago River at that point between the center pier on each side and the banks of the stream would be 50 feet, making 100 foot span. The
3343 current is close to a mile and a half at Lake street. There is a bend at that point of the river and there is also an additional flow comes from the north branch. The north branch enters about, 1,000 feet to the north of Lake street.

I am acquainted with the north branch as far up as Irving Park boulevard and up to Winnetka. Up at Irving Park the channel is very narrow, about 80 feet. There is very little current in the north branch. It is sluggish along there and the wind sometimes causes floating ob-

jects to go a little faster than ordinary, but on a calm day you wouldn't hardly notice any current.

3344 The south branch swings in and joins the river at Lake street. The east branch of the south branch flows into Lake street and becomes the south branch of the river.

I know where the Jackson street bridge is. The south branch of the Chicago River at Jackson street is about 125 feet wide. The current may go a little better than a mile and a half, maybe a mile and three-quarters.

I know where the Fort Wayne bridge is at Stewart avenue. I reckoned about four miles from the mouth of the river. The flowing section of the stream at Stewart avenue is probably 50 foot channel on each side. The current is about a mile and three-quarters, sometimes
3345 two miles at that point.

I know the river at Halsted street. There is quite a current at that point caused by the narrow space. The abutments are built out there and there is an angle in the river. Just before you get to Halsted street the river is close to 200 feet wide. It narrows down right in the draw of the bridge. This is a lift bridge and the abutments are built right up square. Its maximum current is two miles.

I am acquainted with the Chicago River at Robey street and know where the entrance to the Sanitary District canal is located. The width of the entrance of the
3346 Sanitary District canal is about 300 feet wide. The current isn't as strong as it would be in a narrow place. The current may be about half a mile. It isn't so perceptible to us in handling boats. We don't pay much attention to it. At that point the current is a mile and a half easy.

3347 The wind blowing off the lake from the northwest or northeast raises the water level in the river and it rushes in for a little while and then when the wind dies down it kind of backs out again. Whenever there is a big storm

or big blow comes in the lake the water raises and falls alternately every 20 minutes; sometimes flows right out into the lake again. The level goes down two or three feet and we know there is a storm coming when we see that. Something in the nature of a tidal wave back and forth.

Cross-Examination by Mr. O'Connor.

The Chicago River in a general direction flows southwest. I have seen it flow out into the lake prior to 1900.
3348 It was probably stagnant before that time.

The mouth of the Chicago River was considered about where the light house is out in Lake Michigan. The water apparently comes from Lake Michigan and some from the tributary streams.

This head of the Chicago River now is at Robey street.
3349 Before that it was somewhere out on the northwest side towards Galena. We are on the western slope of the watershed and the water flows sometimes from that direction and sometimes from the Desplaines River on the south. The water does not come from the Desplaines now.

The Chicago River is about 22 feet deep at its present mouth. The water all through the Chicago River is
3350 about 21 feet in the channel.

3351 I haven't noticed any difference in the flow between winter and summer. The lake shipping is practically over on the first of September; commences about the first of April. The flow is apparently the same the year around.

I never took any measurements to determine the velocity. I simply judged from objects I have seen floating from where we meet them in the river. It is a matter of judgment on my part. I have seen the depth measured by engineers who were preparing to sink a tunnel.
3352

I imagine the depth of the river as I have given it is approximately correct. On the velocity I have given my best judgment.

Re-direct Examination by Mr. Chipperfield.

The depth I spoke about was 21 or 22 feet at Loomis street. I should judge, at least 15 or 20 feet from the dock on each side. As the stream approaches the dock
3353 it runs to about 18 feet, the deepest part is in the center.

Re-cross Examination by Mr. O'Connor.

In order to accomodate a boat that is drawing 19 feet of water you would not have to have 19 feet of water along the docks, because the boats that are built for lake travel are not built on square or box type. They are bevelled and cut down so when the side of the boat rests against the dock at low water, the bottom of the boat may be eight or nine feet from the dock.
3354 The Chicago River in my best judgment all the way along runs from 18 to 20 feet.

THOMAS MOYNAHAN, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Thomas Moynahan. I reside at Chicago. I have been harbor master of the City of Chicago since June, 1911. I have been acquainted with the Chicago River for some years, 42 years I would say. I was a
3355 bridge tender for many years, tending the bridge at State street.

As harbor master of the City of Chicago I have noticed the current and width of the Chicago River. At

the harbor entrance and down to Lake street it is about 200 to 250 feet wide. South of Lake street it is about 200 from there to the Drainage Canal I would judge; some parts of it is a little narrower. Around Halsted street it might be about 100 feet in the draw, and between Van Buren and Jackson streets it might be 100 feet there, not quite 100. At the narrow points the bridges obstruct the river.

3356 I know where the Pennsylvania crosses. I should judge that it is about 60 feet or somewhere about that wide at that point.

I know the Jackson street bridge. The river would be about 95 to 100 feet wide there.

At State street between the piers of the bridge it is 140 feet wide.

The current of the river as I have observed it is about a mile and a half, take it from the north of the river down to Lake street. Where the north branch comes in. And it runs down to a mile and a quarter south of there.

3357 The north branch has only enough current so you can barely observe it. The south fork of the south branch has very little current.

From Lake street south to the Drainage Canal the current is a mile or a mile and a quarter.

3358 I have been acquainted with Chicago River 42 years.

Cross-Examination by Mr. O'Connor.

I gave a mile and a half as the speed of the river at Lake street. I am simply giving you my best judgment in all of these matters. They are not based upon measurements or readings actually taken. This is the first time I have been called on a case of this sort and about the third time I have ever been in a court room.

3359 Where the Chicago River meets Lake Michigan it would be about three or four hundred feet wide.

It is the same width. The Sanitary District has not widened the Chicago River to my knowledge; they have dredged the river but not widened it. At the mouth of the harbor the current may be two miles, I would not say for sure. I would think it 2260 is 26 to 28 feet deep. At Rush street bridge it is about 24 to 26 feet deep. It is about a uniform depth pretty near to Lake street, then it is 21 feet outside of that. There is about 15 feet left at the side of the docks to keep the docks from falling in. If they dredged a uniform level at the bottom it would be injurious to the docks. Maybe it is ten feet from the top of the surface 3361 of the water there. It is my best judgment down as far as Lake street that it runs from 16 to 15 feet near the docks out to 24 to 26 feet in the center.

At the Rush street bridge it may be flowing a mile and a half. It does not flow as fast there as it does at the mouth. More space at the mouth. I judge the water is flowing faster there. About at Lake street the velocity is a mile and a half or a mile and a quarter, not flowing as 3362 fast as it does at Rush street.

3363 CORNELIUS O'CONNOR, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Cornelius O'Connor. I reside in Chicago. I am a rod man working for the City of Chicago in the 3364 harbor division. I am familiar with the river and have been for eight or ten years. I know where Lake Michigan and the Chicago River join. The width of the stream at that point is 290 to 300 feet. The current is about a mile an hour.

At Rush street the width is 280 to 290 feet. At Lake street the same. Jackson street 95 to 100. At the Penn-

sylvania bridge 110 feet. At Loomis street 140 feet.. At Taylor street 150 to 160 feet in the draw of the bridge. At Halsted street about 85 to 100 feet.

The velocity of the stream in the main river is about a mile an hour; in the south branch about a mile and a quarter to a mile and a half. No noticeable current in the north branch of the Chicago River. There is very little in the south fork of the south branch.

I know where the entrance of the Sanitary District Canal is. The width in the entrance is about 180 feet and the current at that place about a mile and a half. I have 3366 been observing the Chicago River for eight years.

Cross-Examination by Mr. O'Connor.

I have never taken any measurements on the Chicago River at the entrance to Lake Michigan. I am giving you my best judgment. Might be slightly wider or narrower. Some of the widths I have given are well known. The river is 21 to 22 feet deep where it connects with Lake Michigan; about the same at Rush street. It is 3367 supposed to be that to Robey street. It is shallower towards the wharves. A boat drawing 18 feet six can come into the Chicago River.

The velocity where it comes from the lake is about a mile an hour. It does not increase when it gets to Rush street. The only increase is where the draw bridges are narrow.

3368-69 The current in Bubbly Creek, otherwise known as the south fork of the south branch is about a mile an hour.

3370 RICHARD MAHER, a witness for defendant, being sworn testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Richard Maher. I reside in Chicago. I am a hoisting engineer at the Throop street bridge. The Throop Street bridge crosses the drainage canal. It 3371 crosses the Chicago River. The canal and the river are the same there. Where the river enters the Drainage Canal I should judge it is about 200 feet wide outside of the bridge. Inside of the bridge it is much narrower, about 160 feet I should judge.

The current of the river at that point is about a mile or a mile and a quarter. I don't think there is much difference at Robey street.

3372 M. W. SHELLEY, a witness for defendant, being sworn testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is M. W. Shelly. I reside in Chicago. I am bridge tender for the Pennsylvania Company. My bridge is located at 20th and Stewart avenue.

The width of the river at that point is something like 100 feet. The current is about two miles an hour in the center of the draw. The river is 100 feet wide taking 3373 both sides of the river, the bridge is in between. In addition to the bridge obstruction, there are obstructions presented by piers built for the new bridge to be put in; probably takes up about 15 feet more, making a total width of the river at that point not over 85 feet. The current is two miles an hour in my judgment.

3374 Mr. CHIPPERFIELD: May we regard the exhibits which I introduced this forenoon as having been read?

Mr. O'CONOR: Yes.

Mr. CHIPERFIELD: I desire to offer in evidence the rainfall data since the year 1893 at Antioch, in the State of Illinois, certified to by the Secretary of Agriculture. I will put them all in in one list and save time.

I ask to have that marked as Exhibit "65."

Also for the same period at Chicago, Cook County, Illinois, from 1893 down and ask that the same be marked 3375 Exhibit "66."

Also for the same period of time at Chicago Heights, Illinois and ask the same to be marked Exhibit 67.

Also for the same period at Fort Sheridan and ask that the same be marked 68.

Also for the same period at the City of Joliet and ask that the same be marked Exhibit 69.

Also for the same period at LaGrange and ask the same be marked Exhibit 70.

Also for the same period at Lake Forest and ask the same be marked Exhibit 71.

Also for the same period at Lake Villa, and ask the same be marked Exhibit 72.

Also for the same period at Morgan Park and ask the same be marked Exhibit 73.

Also for the same period at Racine, Wisconsin, and ask the same be marked Exhibit 74.

Also for the same period at Wheaton, Du Page County, Illinois, and ask the same be marked Exhibit 75.

Also for the same period at Collegeville, Jasper County, Indiana, and ask the same be marked Exhibit 76.

3376 Also for the same period at Gilman, Iroquois County, Illinois, and ask the same be marked Exhibit 77.

Also for the same period for Hoopeston, and ask the same be marked Exhibit 78.

Also for the same period for Kankakee, and ask the same be marked Exhibit 79.

Also for the same period for Knox, Starke County, Indiana, and ask the same be marked Exhibit 80.

Also for the same period for LaPorte, Indiana, and ask the same be marked Exhibit 81.

Also for the same period for Martinton, Illinois, and ask the same be marked Exhibit 82.

Also for the same period for Plymouth, Indiana, and ask that the same be marked Exhibit 83.

Also for the same period for Rensselaer and ask the same be marked Exhibit 84.

Also for the same period for South Bend, Indiana, and ask the same be marked Exhibit 85.

Also for the same period at Syracuse, Indiana, and ask the same be marked Exhibit 86.

Also for the same period for Valparaiso, and ask the same be marked Exhibit 87.

Also for the same period for Watseko, Iroquois County, Illinois, and ask the same be marked Exhibit 88.

3377 Also for the same period for Wellington, Illinois, and ask the same be marked Exhibit 89.

Also for the same period for Winamac, Indiana, and ask the same be marked Exhibit 90.

Also for the same period at Aurora, Kane County, Illinois, and ask the same be marked Exhibit 91.

Also for the same period for Chemung, McHenry County, Illinois, and ask that the same be marked Exhibit 92.

Also for the same period for Delavan, Wisconsin and ask the same be marked Exhibit 93.

Also for the same period for Dwight, Illinois, and ask the same be marked Exhibit 94.

Also for the same period for Elgin, Illinois, and ask the same be marked Exhibit 95.

Also for the same period for Oswego, Illinois, and ask the same be marked Exhibit 96.

Also for the same period for Riley, McHenry County, Illinois, and ask the same be marked Exhibit 97.

Also for the same period for St. Charles, Kane County, Illinois, and ask the same be marked Exhibit 98.

Also for the same period for Sandwich, Illinois, and ask the same be marked Exhibit 99.

Also for the same period for Sharon, Wisconsin, and ask the same be marked Exhibit 100.

Also for the same period for Sycamore, Illinois, and ask the same be marked Exhibit 101.

Also for the same period for Waukesha, Wisconsin, and ask the same be marked Exhibit 102.

Also for the same period for Woodstock, McHenry County, Illinois, and ask the same be marked Exhibit 103.

Also for the same period for Yorkville, Illinois, and ask the same be marked Exhibit 104.

Also for the same period for Forrest, Illinois, and ask the same be marked Exhibit 105.

Also for the same period for Lexington, Illinois, and ask the same be marked Exhibit 106.

Also for the same period for Minonk, Illinois, and ask the same be marked Exhibit 107.

Also for the same period for Pontiac, Illinois, and ask the same be marked Exhibit 108.

Also for the same period for Strawn, Illinois, and ask the same be marked Exhibit 109.

Also for the same period for Streator, Illinois, and ask the same be marked Exhibit 110.

Also I want to introduce a certified copy of report of the climatological service department of the United States 3379 under the hand of the secretary, the acting secretary of the department with the seal of the department of agriculture of the United States Government attached thereto and ask to have it marked Exhibit 111.

Whereupon said documents were received in evidence by the court, marked respectively Exhibits "65" to

"111" both inclusive, and are in words and figures following, to-wit:

(Said Exhibits 66 to 111, being certified in the same manner as Exhibit Number 65.)

3380

EXHIBIT "65."

"UNITED STATES OF AMERICA,
DEPARTMENT OF AGRICULTURE..
WASHINGTON, D. C.

November 12, 1910.

Pursuant to section 882 Revised Statutes, I hereby certify that it appears from the records of The United States Weather Bureau, Washington, D. C., that the attached statement showing the monthly and annual amounts of precipitation at

Antioch, Lake County, Illinois,

is a true copy of the official records on file in the Weather Bureau.

(Signed) H. E. WILLIAMS,
Acting Chief, U. S. Weather Bureau.

Be it known that H. E. Williams, who signed the foregoing certificate, is the Acting Chief U. S. Weather Bureau, and that to his attestation full faith and credit are and ought to be given.

In witness whereof, I have hereunto signed my hand and cause the seal of the department of agriculture to be affixed on this 12th day of November, 1910.

(Signed) W. N. HAYS,
Acting Secretary of Agriculture.

3380-3479 EXHIBIT 65.

ANTIOCH, ILL. LAKE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1901	....	....	....	....	....	....	2.85	1.31	1.97	0.61	0.66	0.90	.....
1902	0.45	1.40	1.95	1.30	7.45	5.90	6.25	.55	7.35	3.67	1.80	.70	38.77
1903	0.35	0.60	2.60	2.55	3.65	2.90	6.60	7.95	6.35	0.80	0.70	1.10	36.15
1904	0.55	1.10	5.20	2.20	1.90	1.39	4.41	2.20	4.55	1.20	0.75	1.30	26.75
1905	1.00	2.05	2.65	....	4.45	2.95	5.80	5.20	2.80	....	1.70	1.55	.....
1906	3.20	2.40	0.60	1.95	2.10	2.95	1.65	5.33	5.87	2.25	3.30	1.15	32.75
1907	3.80	0.30	1.65	0.95	5.29	4.80	2.02	3.96	5.43	1.05	1.87	2.10	33.22
1908	2.55	2.20	3.35	4.85	5.26	3.60	4.29	1.57	1.00	1.15	2.70	1.00	33.52
1909	2.20	1.60	0.60	8.68	1.05	2.00	1.15	6.55	3.62	0.61	3.23	3.50	34.79
1910	2.20	0.65	0.05	2.94	4.94	1.30	0.83	3.61	2.80	2.37	2.00	....	.....

EXHIBIT 66.

CHICAGO, ILL. COOK CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1871	4.13	1.45	2.66	3.70	3.90	5.56	2.52	2.01	0.74	1.88	3.62	3.44	35.61
1872	0.68	0.84	3.79	3.03	3.24	3.45	3.09	2.59	6.43	0.65	1.06	0.22	29.07
1873	2.56	0.47	0.89	6.22	7.20	1.44	4.04	1.58	3.53	2.43	1.61	4.44	36.41
1874	3.47	1.51	2.15	2.67	2.08	3.25	0.58	3.15	3.76	2.55	2.83	0.63	28.63
1875	0.96	1.99	1.43	2.32	3.64	5.17	7.18	3.29	4.39	4.32	0.75	2.62	38.06
1876	3.22	3.90	4.04	2.07	1.85	5.96	3.11	3.66	3.74	1.20	3.25	0.48	36.48
1877	1.91	0.06	5.37	2.42	1.81	6.04	2.98	3.06	2.02	6.51	6.08	2.75	41.01
1878	1.31	2.12	4.39	5.57	5.22	3.02	6.09	3.66	1.99	5.17	0.83	2.58	41.95
1879	0.54	1.47	2.37	1.93	3.89	3.18	5.58	0.45	1.18	2.72	4.93	2.47	30.71
1880	3.53	2.91	2.25	5.20	4.97	3.50	3.07	4.47	2.25	3.19	0.87	1.11	37.32
1881	0.87	5.98	2.99	1.84	1.85	5.93	4.31	0.54	4.34	6.89	5.97	2.67	44.18
1882	1.55	2.24	3.43	6.72	5.52	5.71	3.43	4.96	0.91	3.40	1.48	1.99	41.34
1883	1.74	4.74	0.42	3.72	7.32	5.61	5.53	1.21	1.36	7.36	5.26	1.59	45.86
1884	1.39	3.27	5.16	3.05	1.53	2.11	3.71	2.50	2.29	3.59	1.80	4.21	34.61
1885	3.18	2.01	0.57	4.00	3.17	5.20	2.44	11.28	2.97	3.87	2.33	3.35	44.37
1886	3.56	1.51	1.79	1.29	1.00	0.94	1.53	3.38	6.93	1.42	1.66	1.76	26.77
1887	3.13	5.10	0.89	0.46	1.38	1.63	1.05	3.35	4.03	2.03	2.41	3.67	29.13
1888	1.56	1.51	2.99	2.13	6.22	1.66	3.93	2.10	0.98	2.95	2.89	1.94	30.86
1889	1.64	1.31	1.43	2.35	5.38	2.93	9.56	0.39	2.75	1.82	3.49	1.90	34.95
1890	2.98	2.42	2.10	3.23	5.13	3.25	2.57	2.58	1.39	4.20	1.59	1.25	32.69
1891	1.99	1.95	2.13	3.14	2.09	2.42	2.47	4.52	0.32	0.36	3.83	1.32	26.54
1892	1.99	1.57	2.21	2.17	6.77	10.58	2.23	1.85	1.34	1.54	2.68	1.63	36.56
1893	2.08	2.44	1.69	4.16	1.93	3.59	3.08	0.18	1.98	1.75	2.45	2.14	27.47
1894	1.55	2.13	2.66	2.65	3.35	1.96	0.60	0.60	8.28	0.84	1.18	1.66	27.46
1895	2.15	1.60	1.32	0.86	1.99	1.79	2.42	6.49	0.89	0.51	5.60	6.76	32.38
1896	1.12	3.48	1.26	2.79	4.16	2.82	3.61	3.52	6.70	1.36	2.16	0.16	33.14
1897	4.53	2.22	3.56	2.23	0.84	3.60	1.47	1.70	0.84	0.18	3.06	1.62	25.85
1898	3.54	2.59	4.60	0.76	2.23	5.30	1.94	3.03	3.16	3.26	2.25	1.11	33.77
1899	0.58	1.60	2.11	0.14	4.35	2.71	6.66	0.91	2.39	2.09	1.14	1.81	26.49
1900	1.21	3.52	1.58	1.02	3.59	2.06	4.64	4.24	1.56	1.35	3.30	0.58	28.65
1901	1.15	2.05	3.38	0.33	2.18	2.42	4.25	2.00	2.92	1.29	0.85	1.70	24.52
1902	0.66	1.53	4.16	2.26	5.08	6.45	5.78	1.44	4.83	1.45	2.03	1.90	37.57
1903	1.09	3.03	1.67	3.77	0.93	1.62	4.78	3.49	4.00	1.09	0.34	2.28	28.09
1904	2.25	1.71	4.57	3.01	1.54	.55	2.76	4.00	2.65	1.58	.31	1.21	26.14
1905	1.33	1.95	2.43	3.03	5.14	3.27	5.02	4.46	4.18	1.82	2.05	0.68	35.36
1906	1.67	2.37	1.61	1.86	2.09	1.87	4.84	1.43	5.54	2.05	3.08	2.46	30.87
1907	4.21	1.00	2.94	2.37	3.50	3.64	3.15	4.22	4.49	0.93	1.92	2.73	35.10
1908	2.05	3.72	3.48	2.81	6.74	1.48	1.45	6.35	2.09	.81	2.67	1.18	34.83
1909	1.96	3.84	1.63	7.73	2.18	5.09	1.77	6.20	3.60	1.20	3.84	4.18	43.22
1910	3.07	0.89	0.29	3.84	4.67	0.91	1.79	3.08	3.90	1.79	1.31	1.32	26.86

EXHIBIT 67.

CHICAGO HEIGHTS, ILL. COOK CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1901	....	....	....	....	....	2.51	3.39	2.24	2.98	1.80	....	....	....
1902	0.43	0.88	4.54	2.01	4.04	13.24	5.40	1.78	5.55	1.83	2.37	1.55	43.62
1903	1.15	2.62	2.34	4.32	3.53	1.91	5.50	4.59	5.40	1.26	0.68	2.07	35.37
1904	2.21	....	....	....	....	....	....	....	....	....	....	....	....

EXHIBIT 68.

FORT SHERIDAN, ILL. LAKE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1889	....	3.40	1.40	2.80	3.22	4.10	3.17	0.31	2.20	0.75	0.65	4.75	....
1890	2.68	1.84	2.33	4.82	5.25	7.77	1.25	2.47	1.32	6.02	0.92	2.27	38.94
1891	1.73	2.25	2.56	4.33	2.25	5.69	1.94	3.75	0.48	1.55	4.09	0.90	31.50
1892	0.48	1.81	0.95	3.57	6.51	10.19	2.54	0.86	1.67	0.00	1.78	2.60	32.96
1893	2.02	1.10	1.95	5.87	2.07	3.62	3.77	0.10	3.62	1.19	2.87	1.61	29.79
1894	2.94	1.45	2.01	4.70	4.01	0.51	T	0.27	6.56	2.49	1.64	1.26	27.84
1895	2.61	0.32	0.45	2.50	3.70	2.60	3.30	3.81	4.88	0.41	2.14	....	....
1896	0.56	1.06	2.53	3.13	2.35	1.95	3.86	1.79	5.60	0.97	2.80	0.65	27.25
1897	4.41	1.07	4.16	2.20	1.32	4.41	1.34	1.52	1.10	0.25	3.53	1.51	26.82
1898	2.59	2.91	3.13	1.35	2.43	2.56	1.65	2.86	2.48	3.10	1.44	0.91	27.41
1899	0.52	1.27	2.47	0.27	6.04	2.53	2.91	2.05	2.76	1.85	2.40	1.31	26.38
1900	1.68	....	....	....	....	....	....	....	....	....	....	....	....

EXHIBIT 69.

JOLIET, ILL. WILL CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1887	....	....	....	....	0.97	2.07	2.47	2.71	2.96	2.95	1.85	3.17	....
1888	0.90	1.00	2.35	2.10	8.50	1.70	0.70	6.00	0.90	3.30	....	....	....
1893	....	....	....	....	....	....	....	....	....	....	1.87	1.57	....
1894	1.16	1.31	2.87	2.23	3.69	2.84	0.46	0.85	5.99	1.18	1.68	1.00	25.26
1895	1.82	0.67	1.04	1.92	1.95	1.26	4.32	2.96	0.93	0.67	2.90	6.62	27.06
1896	1.14	2.07	1.15	2.82	5.28	3.89	4.97	2.75	6.69	0.86	2.96	0.36	34.94
1897	6.67	1.84	3.80	2.87	1.25	5.19	1.59	0.55	0.63	0.44	4.42	1.68	30.93
1898	4.05	2.28	6.12	1.42	3.82	7.89	1.59	4.69	3.20	4.53	2.61	2.15	44.35
1899	0.82	1.68	2.23	0.35	4.69	2.17	5.26	1.74	2.44	2.39	1.15	1.70	26.62
1900	1.58	4.29	2.24	0.79	4.27	1.80	5.08	5.74	2.05	1.61	3.10	0.53	33.08
1901	1.88	1.62	3.62	0.56	0.81	3.14	5.42	2.84	2.55	0.85	1.63	2.36	27.28
1902	0.55	1.43	5.51	2.36	7.48	12.86	9.38	3.15	6.28	2.44	2.99	1.68	56.11
1903	1.05	2.92	2.22	3.62	2.49	1.68	4.46	4.77	4.98	1.40	0.86	2.18	32.63
1904	2.42	1.75	4.97	3.81	3.19	0.94	2.97	3.19	4.95	1.44	0.10	1.63	31.36
1905	1.18	1.43	2.29	4.13	5.42	5.10	4.18	4.29	3.63	3.57	2.66	1.46	39.34
1906	2.23	2.30	1.61	1.67	2.00	1.85	2.51	4.00	5.68	2.76	2.63	3.13	32.37
1907	5.70	0.32	3.00	2.28	3.32	1.70	5.38	4.66	6.13	0.66	1.86	3.07	38.08
1908	0.77	2.66	4.33	3.62	6.95	1.30	3.79	3.80	1.32	0.82	2.77	1.30	33.13
1909	1.12	3.38	1.56	6.60	3.46	3.80	1.69	2.95	3.09	1.68	4.55	3.50	37.38
1910	2.52	1.21	0.24	3.81	4.90	0.81	1.46	3.17	2.75	1.68	0.62	1.12	24.29

Remarks: From Nov. 1893 to April, 1895, inclusive, the values are for Braidwood, 19 miles distant.

EXHIBIT 70.

LA GRANGE, ILL. COOK CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1890	....	....	....	....	....	....	....	....	....	....	....	....	....
1891	....	....	....	....	....	....	....	....	....	....	....	....	....
1892	....	0.83	2.20	2.76	8.00	12.25	....	....	1.70	0.81	2.24	1.93	....
1893	1.91	1.79	2.15	5.61	2.27	5.30	2.96	0.23	2.84	0.52	2.26	2.00	29.84
1894	1.64	1.72	....	....	3.16	2.09	....	....	8.87	1.04	1.45	0.71	....
1895	1.64	0.45	0.85	1.17	2.24	2.00	....	5.69	1.10	0.77	5.09	6.04	....
1896	1.16	2.39	1.04	4.21	4.73	2.63	....	....	5.39	0.85	3.03	0.10	....
1897	6.09	1.83	4.00	3.50	1.85	3.74	2.97	1.57	0.80	0.33	3.82	1.36	31.86
1898	4.30	2.60	5.87	1.14	3.50	6.92	2.77	4.59	3.97	4.21	2.69	1.56	44.12
1899	0.37	1.91	2.06	0.35	5.98	1.86	8.80	2.18	1.73	2.54	1.53	1.63	30.94
1900	1.30	3.38	1.84	0.95	3.78	3.40	5.64	4.81	1.95	1.12	3.32	0.32	31.81
1901	1.45	2.03	3.78	0.47	0.96	4.38	2.87	2.00	3.56	1.65	1.04	1.33	25.52
1902	0.53	1.34	3.19	1.89	6.16	10.64	7.51	2.08	5.91	2.09	2.68	2.31	46.33
1903	0.86	2.90	2.51	3.51	1.27	2.06	....	....	5.54	1.50	0.37	2.08	....
1904	1.65	1.56	5.30	2.02	1.57	0.79	3.55	3.06	3.69	1.59	T	0.99	25.77
1905	0.72	1.06	1.58	3.41	5.91	3.33	3.56	2.65	4.25	1.65	2.77	0.46	31.35
1906	1.61	2.50	2.56	1.59	2.42	2.49	2.16	5.53	6.19	2.72	2.69	2.36	35.82
1907	5.17	0.40	2.71	2.45	2.61	3.99	4.54	4.28	5.72	1.05	1.15	1.81	35.88
1908	1.41	3.40	3.20	2.71	6.16	1.30	3.54	7.75	1.40	0.89	2.40	1.34	35.50
1909	1.68	3.73	1.42	8.22	2.54	6.33	1.28	6.45	3.26	1.24	4.05	4.12	44.32
1910	2.35	0.83	0.05	3.47	5.13	1.06	....	....	4.39	1.44	1.73	1.28	....

EXHIBIT 71.

LAKE FORREST, ILL. LAKE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1886	....	....	....	....	4.05	2.27	0.54	6.65	4.88	1.37	1.47	2.71	....
1887	3.84	5.43	1.06	1.70	2.01	1.00	1.55	3.63	4.47	2.97	2.10	4.04	33.80
1888	1.70	1.30	3.58	1.77	4.29	2.68	1.89	3.46	1.50	2.57	2.86	1.69	29.29
1889	1.62	1.27	1.82	2.83	4.60	4.21	4.77	0.71	2.22	2.40	2.45	2.66	31.56
1890	2.76	1.77	3.29	4.29	5.08	5.29	....	....	....	....	....	....	....

EXHIBIT 72.

LAKE VILLA, ILL. LAKE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1900			.00	1.57	....	....	....	11.03	1.86	....	....	....	....

EXHIBIT 73.

MORGAN PARK, ILL. COOK CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1900	1.41	3.45	....	....	....	....	....	....	....	....	....	....	....
1901	0.70	1.45	3.98	0.69	0.85	3.35	5.71	1.24	3.68	1.35	1.42	2.29	26.71
1902	0.45	1.14	4.76	2.89	7.84	10.70	6.58	2.47	....	....	....	....	....

EXHIBIT 74.

RACINE, WIS. RACINE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1896	....	....	....	....	3.01	1.92	4.94	1.02	9.22	.71	1.80	.64	...
1897	3.25	.84	4.01	3.96	.87	3.41	1.93	2.47	1.29	.56	1.92	1.35	25.86
1898	3.51	2.37	3.15	1.54	1.81	2.44	3.24	3.20	2.90	3.13	1.29	.53	29.11
1899	.35	T	1.69	.31	4.89	3.17	4.26	1.08	4.25	1.34	2.17	2.04	25.55
1900	1.95	2.71	1.20	.83	1.75	2.21	6.66	5.65	1.82	1.87	4.19	.34	31.18
1901	.83	1.62	3.79	.33	2.09	2.23	.86	1.41	3.82	.86	.87	1.29	20.00
1902	.37	1.03	2.61	.92	5.77	5.46	6.87	.45	6.80	1.39	2.19	2.20	36.06
1903	.57	1.77	2.71	2.76	2.39	3.61	3.23	4.76	4.20	1.39	.73	.76	28.88
1904	1.75	.84	5.28	1.71	1.33	2.36	3.35	2.32	2.89	1.47	.17	1.80	25.27
1905	.93	.85	1.96	4.05	4.49	3.74	3.45	5.56	2.37	3.43	2.02	1.15	34.00
1906	2.46	1.94	1.59	1.61	1.50	2.46	1.04	3.85	7.30	2.25	2.92	1.44	30.36
1907	2.99	0.57	2.98	2.53	4.29	4.45	4.79	4.06	4.87	1.02	1.24	1.75	35.54
1908	1.48	2.59	2.48	4.13	5.29	2.68	3.52	1.80	1.22	1.30	2.15	0.90	29.54
1909	2.50	2.24	0.60	7.82	0.83	2.42	2.34	2.90	3.48	0.67	3.00	3.50	32.30
1910	1.61	0.36	0.72	2.66	3.18	0.90	0.45	2.24	1.47	2.13	1.77	0.26	17.75

EXHIBIT 75.

WHEATON, ILL. DU PAGE CO.

[illegible]

EXHIBIT 76.

COLLEGEVILLE, IND. JASPER CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1907	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.50	2.00	2.14	.....
1908	1.07	3.00	3.92	3.66	8.91	1.90	3.63	2.66	1.37	0.82	2.61	1.62	35.17
1909	2.29	7.16	2.77	5.76	3.38	5.42	5.02	6.97	4.26	2.62	4.20	3.21	53.06
1910	2.85	2.45	0.98	2.98	6.40	0.96	4.95	5.40	5.03	2.35	1.19	1.75	37.29

EXHIBIT 77.

GILMAN, ILL. IROQUOIS CO.

[illegible]

EXHIBIT 78. HOOPESTON, ILL. VERMILION CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1902	....	....	....	....	....	14.37	4.85	2.30	3.01	1.99	2.88	2.60	.....
1903	1.94	3.03	0.64	6.45	3.77	1.84	3.85	5.78	1.64	1.92	1.80	2.45	35.11
1904	5.20	2.16	7.36	2.61	2.35	1.87	4.36	2.81	3.91	0.38	0.08	1.35	34.44
1905	1.76	2.77	1.24	3.91	4.53	2.15	3.81	3.75	5.09	2.82	2.83	1.47	36.13
1906	2.52	1.52	4.46	1.84	3.58	1.57	2.34	7.87	2.31	1.50	5.55	3.57	38.63
1907	5.89	0.22	4.26	2.90	3.28	5.34	6.48	2.08	5.09	0.94	2.27	3.88	42.63
1908	1.41	6.23	3.64	4.45	8.07	0.86	2.19	1.11	1.79	0.33	2.81	1.61	34.50
1909	2.87	6.88	1.76	.45	4.24	4.18	6.07	5.28	2.33	2.10	3.47	3.61	49.24
1910	2.99	1.86	0.46	2.46	5.38	1.73	4.66	2.23	5.12	....	0.85	2.07	.....

EXHIBIT 79. HOSPITAL, ILL. KANKAKEE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1886	....	....	....	....	....	....	....	2.83	4.66	....	1.10	1.05	.....
1887	1.45	4.50	0.68	0.90	1.93	1.75	1.10	2.65	....	1.20	....	....	.....
1888	....	....	....	1.15	....	....	....	....	....	....	....	1.50	.....
1889	1.54	1.02	....	....	....	....	....	....	....	....	....	....	.....
1890	....	....	....	....	....	....	....	....	....	....	....	....	.....
1891	....	....	....	....	....	....	....	....	....	....	....	....	.....
1892	....	....	....	....	10.09	4.67	2.51	2.24	2.03	0.86	2.96	....	.....
1893	1.00	0.38	1.13	5.45	4.83	1.28	T	0.55	1.69	1.70	....	....	.....
1894	2.35	1.67	2.04	3.54	3.29	1.11	0.85	1.30	8.44	0.50	2.20	0.94	28.23
1895	1.00	0.19	1.02	2.81	2.64	1.11	2.53	2.61	1.79	1.52	3.02	5.81	26.05
1896	1.09	2.00	0.53	1.93	5.53	5.64	7.31	4.99	5.82	0.48	1.95	0.17	37.44
1897	3.23	1.07	3.09	1.99	1.51	3.32	2.15	0.36	0.20	1.60	3.63	....	.....
1898	....	....	7.69	1.31	5.66	1.72	1.69	4.20	5.80	4.18	2.33	1.17	.....
1899	1.20	....	2.75	0.41	3.90	2.31	3.78	2.20	2.83	....	2.00	....	.....
1900	....	....	....	....	....	....	....	....	....	....	....	....	.....

EXHIBIT 80. KNOX, IND. STARKE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1897	....	....	....	1.90	2.20	4.30	2.50	1.80	....	1.80	3.10	....	.....
1898	2.70	....	....	1.30	2.60	....	....	5.00	....	....	....	....	.....
1899	....	....	....	....	....	....	....	....	....	....	....	....	.....
1900	....	....	....	....	....	....	....	....	....	....	....	....	.....
1901	....	....	....	....	....	....	....	....	....	....	....	....	.....
1902	....	....	....	....	....	....	....	....	....	....	....	....	.....
1903	....	....	....	....	....	....	....	....	....	....	....	....	.....
1904	....	....	....	....	....	....	....	....	....	....	....	....	.....
1905	....	....	....	....	....	....	....	....	....	2.04	2.56	1.88	.....
1906	3.57	1.16	2.81	2.69	2.45	3.94	2.34	3.18	1.51	2.70	4.78	4.14	35.27
1907	4.17	0.23	5.47	3.57	3.02	4.20	5.37	4.22	4.34	1.87	2.37	5.00	43.83
1908	1.75	5.57	3.87	3.42	6.94	1.65	3.10	3.42	1.19	0.34	3.16	1.52	35.93
1909	5.01	6.57	2.15	6.00	3.26	4.44	4.01	5.70	3.41	2.61	4.44	2.93	50.53
1910	3.07	1.61	0.51	4.73	5.07	0.56	3.00	6.19	4.17	2.78	1.32	1.40	34.41

EXHIBIT 81.

LA PORTE, IND. LA PORTE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1897	....	....	....	2.35	3.34	2.51	3.43	.56	.33	1.08	4.42	3.55	....
1898	3.53	2.41	4.78	1.12	2.69	3.64	2.01	3.10	2.56	6.95	2.65	2.29	37.73
1899	2.06	1.52	3.37	.83	4.47	.60	3.35	1.07	2.76	3.42	1.53	3.63	28.61
1900	1.11	3.97	2.59	1.29	2.14	1.82	5.47	5.51	1.63	1.84	4.49	1.05	32.91
1901	2.75	2.25	4.10	1.34	1.82	2.49	3.36	3.71	2.82	4.19	1.55	2.83	33.21
1902	.96	1.85	4.22	2.25	7.04	8.68	5.01	2.75	5.26	1.38	3.27	3.09	45.76
1903	1.58	3.12	1.71	5.30	2.59	2.06	5.73	4.05	4.79	1.50	1.64	3.21	37.28
1904	2.66	3.24	4.70	1.37	2.25	1.25	.94	3.04	3.10	1.22	.83	1.40	26.00
1905	2.09	1.76	2.46	3.04	7.73	5.11	4.01	3.20	4.92	1.27	2.61	1.29	39.49
1906	2.66	1.70	2.21	1.75	3.20	3.46	3.51	4.65	2.26	3.56	3.85	3.61	36.42
1907	3.60	1.00	4.15	4.01	4.72	3.78	4.49	3.73	6.60	1.90	3.00	2.76	43.74
1908	2.29	8.32	4.08	2.98	6.21	1.96	2.62	2.92	1.44	.86	3.20	1.56	38.44
1909	2.15	3.40	1.88	5.39	3.05	5.52	2.79	3.32	2.24	1.40	3.92	2.30	37.36
1910	1.84	2.02	0.49	3.48	6.31	....	0.88	3.53	3.63	2.54	1.50	2.09	....

EXHIBIT 82.

MARTINTON, ILL. IROQUOIS CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1896	....	....	....	....	3.25*	4.42	7.02	3.62	5.50	0.25	1.98	0.13	....
1897	3.61	1.37	3.96	2.26	1.78	4.44	1.67	1.28	0.29	0.61	5.71	2.20	29.18
1898	3.44	1.90	4.38	1.98	5.66	2.65	1.11	4.03	5.77	4.36	2.81	1.80	39.89
1899	1.37	0.89	2.14	0.20	4.02	2.22	2.55	2.19	2.30	3.17	1.84	3.11	26.00
1900	0.74	4.56	3.52	1.31	4.22	2.33	4.34	5.10	2.09	1.82	5.78	0.52	36.33
1901	1.55	1.30	4.06	1.37	2.19	4.76	1.85	3.15	1.82	2.90	1.10	3.10	29.15
1902	0.83	1.81	4.14	3.36	4.51	12.53	6.29	2.37	6.84	1.72	3.37	2.91	50.68
1903	1.29	2.00	1.28	7.18	4.67	3.33	4.34	3.88	2.40	2.54	0.79	0.29	33.99
1904	2.02	1.60	4.08	3.26	3.92	1.68	2.03	3.24	4.81	1.23	.09	1.85	29.81
1905	0.81	2.05	1.79	3.96	8.93	4.38	2.68	4.91	2.77	2.10	2.68	1.60	38.66
1906	3.26	1.77	3.54	2.03	4.25	3.17	6.02	7.19	4.59	1.80	3.25	3.40	44.27
1907	4.57	0.20	5.23	2.56	2.86	4.04	5.65	6.62	4.17	0.65	2.70	4.68	43.93
1908	1.75	4.05	2.79	4.30	9.95	1.65	1.24	2.86	2.60	0.67	1.58	2.08	35.52
1909	2.30	4.39	2.00	4.90	2.95	4.27	2.45	7.31	3.82	3.35	5.53	4.10	47.37
1910	2.55	1.07	0.45	2.27	4.47	1.25	4.36	5.80	4.50	2.87	0.26	1.16	31.01

Remarks: *15 to 31 only.

EXHIBIT 83.

PLYMOUTH, IND. MARSHALL CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1894	....	....	....	2.23	6.07	1.82	3.55	1.25	6.43	1.34	2.98	1.67	....
1895	2.14	0.82	0.94	2.30	1.43	1.81	....	....	....	....	....	....	....
1905	....	....	....	....	....	....	....	....	....	....	....	1.95	....
1906	2.57	1.06	2.52	2.30	2.75	5.07	2.13	2.49	2.19	2.47	4.16	3.21	32.92
1907	3.13	.06	3.69	3.38	2.74	4.40	4.22	3.58	4.02	1.32	2.19	4.60	37.33
1908	1.24	5.17	3.19	3.29	7.41	2.06	2.19	2.59	0.93	0.28	2.32	1.74	32.41
1909	3.25	4.70	2.72	4.94	3.05	4.49	3.58	4.95	3.49	2.24	3.32	3.28	44.01
1910	1.66	1.64	0.33	4.22	4.54	0.76	2.30	3.68	4.45	3.12	1.21	1.99	29.90

EXHIBIT 84.

RENSSELAER, IND. JASPAR CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1894	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.90 ^p	1.50*	.....
1895	1.85	.....	.....	2.90	.....	.....	.....	.....	.....	.....	.....	6.60	.....
1900	.....	.....	.....	.....	4.05	4.40	3.80	2.50	1.30	.70	4.90	.40	.....
1901	2.10	1.27	4.02	1.30	.....	.....	2.40	.....	1.75	4.38	1.29	3.51	.....
1902	1.03	1.81	3.23	1.93	2.81	13.90	6.47	1.56	4.20	1.52	3.06	2.79	44.31
1903	1.09	3.49	1.30	5.94	2.69	2.34	4.85	5.11	2.73	2.46	1.13	2.81	35.94
1904	4.22	2.33	5.91	4.25	3.14	0.52	3.28	2.97	3.65	1.14	0.29	2.39	34.09
1905	2.10	2.10	1.59	3.86	7.93	2.77	3.80	3.00	3.69	2.36	2.51	1.48	37.19
1906	2.35	1.22	2.98	1.85	1.95	1.76	3.97	5.80	2.80	1.79	4.30	4.06	34.83
1907	4.83	.08	6.37	3.42	4.40	3.75	5.50	4.18	3.10	0.73*	.....	.....	.....

Remarks: 19 days only —P; 22 days only — * * 28 days only.

EXHIBIT 85.

SOUTH BEND, IND. ST. JOSEPH CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1874	.....	.....	.....	.....	.....	.....	2.88	3.58	1.35	2.04	4.50	2.10	.....
1875	2.20	3.00	2.00	2.10	3.65	1.92	1.50	.....	1.05	3.10	1.10	3.00	.....
1876	2.20	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1893	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3.31	.....
1894	1.68	2.08	2.49	3.57	6.15	1.92	1.66	0.51	4.88	1.80	2.80	1.09	30.63
1895	3.77	0.82	0.75	1.06	1.30	1.48	1.59	2.35	1.22	1.49	3.84	8.25	27.92
1896	1.04	1.77	2.28	2.35	3.01	3.81	7.45	4.79	4.92	0.98	2.69	0.37	35.46
1897	5.53	1.79	3.31	2.52	3.09	1.65	1.75	3.65	0.23	0.71	4.66	3.50	32.39
1898	3.52	2.66	4.47	1.01	2.97	3.41	1.94	4.11	1.81	6.56	3.61	2.25	38.32
1899	2.01	2.18	3.81	0.80	4.52	1.63	2.64	0.66	4.05	3.70	1.54	4.23	31.77
1900	0.87	3.97	2.46	1.17	1.74	2.66	5.81	6.43	2.25	1.31	5.26	0.62	34.55
1901	2.51	1.88	4.32	1.67	1.96	3.01	2.25	2.46	1.42	3.95	2.00	3.50	30.93
1902	1.16	1.45	3.85	2.38	6.94	7.39	4.16	1.58	4.50	1.46	3.35	3.31	41.53
1903	2.91	3.33	1.86	4.89	1.25	5.52	6.43	5.21	3.72	2.47	1.43	3.30	42.32
1904	3.76	2.40	5.51	2.92	3.95	1.16	2.38	3.00	2.11	2.12	0.37	1.79	31.47
1905	2.85	1.61	2.59	3.99	6.46	2.44	5.47	4.96	3.93	1.25	2.22	1.50	39.27
1906	2.42	1.28	2.98	2.08	2.21	4.36	3.56	4.08	1.13	3.77	3.57	4.09	35.53
1907	3.42	0.42	3.91	3.76	4.13	4.83	5.10	3.48	4.82	2.43	2.36	4.92	43.58
1908	1.54	5.51	3.74	3.38	7.17	2.74	1.96	1.68	1.15	0.33	2.26	1.60	33.06
1909	4.46	4.64	1.66	4.96	3.34	4.59	3.23	3.68	3.00	2.12	4.68	3.40	43.76
1910	2.91	1.89	0.43	2.97	4.33	1.42	1.53	2.82	6.31	4.66	1.25	2.59	33.11

EXHIBIT 86.

SYRACUSE, IND. KOSCIUSKO CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1895	.....	.....	.....	.....	.....	.....	.....	.....	1.53*	1.59	4.71	7.35	.....
1896	1.35	1.55	.....	2.51	3.43	2.04	8.83	5.19	4.54	.59	2.49	.85	.....
1897	4.56	1.57	4.38	2.28	3.56	3.58	1.47	4.30	.20	2.81	5.26	2.30	36.27
1898	3.48	2.60	6.33	1.16	4.79	2.98	4.48	3.02	2.75	5.30	4.21	2.20	43.30
1899	2.67	2.85	4.06	1.62	5.42	1.98	4.32	1.89	2.71	4.60	2.40	3.47	38.05
1900	.79	4.61	2.90	1.83	2.58	3.70	4.90	4.20	2.04	4.05	6.68	.76	39.04
1901	3.39	2.68	4.41	2.34	2.10	2.16	2.70	1.05	.77	6.85	1.59	4.48	34.52
1902	1.08	2.37	3.34	1.74	4.50	8.76	6.27	2.70	6.30	1.61	3.18	3.17	45.02
1903	1.51	3.99	1.69	4.94	1.73	3.24	4.80	4.83	3.81	3.13	1.86	3.02	38.55
1904	5.46	3.70	6.57	3.76	4.09	1.26	2.13	6.79	3.34	2.51	0.11	1.19	40.91
1905	2.28	2.00	2.32	4.93	6.29	5.11	4.25	5.24	3.88	4.04	2.82	2.21	45.37
1906	3.57	1.12	3.43	3.26	1.51	5.81	3.77	2.04	4.12	2.64	3.73	3.73	38.73
1907	4.38	T	3.62	3.16	4.62	5.69	.....	.....	.....	.....	.....	.....	.....

Remarks: * 14 days only.

EXHIBIT 87.

VALPARAISO, IND. PORTER CO.

[illegible]

EXHIBIT 88.

WATSEKA, ILL. IROQUOIS Co.

[illegible]

EXHIBIT 89.

WELLINGTON, ILL. IROQUOIS CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1901	....	....	4.12	1.50	1.20	2.92	1.39	3.56	5.41	2.80	1.06	2.13	.....
1902	0.80	0.57	1.88	1.02	4.71	10.49	2.44	1.90	3.53	1.55	1.94	....	.....

EXHIBIT 90.

WINAMAC, IND. PULASKI CO.

[illegible]

EXHIBIT 91

AURORA (No. 1), ILL. KANE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1857	....	....	....	....	....	....	....	....	....	4.40	2.57	1.00	....
1858	2.19	1.34	2.38	5.19	6.83	5.07	5.69	3.84	5.01	3.91	3.64	2.41	47.50
1859	1.82	1.22	6.00	2.90	2.69	2.88	2.02	2.52	3.06	1.53	3.08	0.75	30.47
1860	....	1.62	0.66	2.28	4.57	3.13	6.10	1.67	3.01	....	....	2.95	....
1861	1.05	2.40	....	....	....	....	....	....	....	....	....	....	....
1865	....	....	....	....	....	....	....	....	....	....	....	....	....
1866	1.97	0.77	2.01	0.95	1.67	2.32	3.21	6.02	4.80	2.50	0.94	3.08	30.24
1867	2.45	3.30	1.49	2.39	5.24	3.41	2.98	2.79	2.54	1.21	2.17	1.29	31.26
1868	0.90	1.05	6.86	4.91	2.55	3.00	2.28	4.50	5.47	2.07	2.55	....	....
1869	....	....	....	....	....	....	....	....	....	....	....	3.63	....
1870	5.48	2.45	1.92	1.58	1.35	1.63	5.50	3.31	3.63	4.63	1.51	1.37	34.36
1871	....	1.80	3.04	2.33	4.48	4.75	1.75	1.97	0.73	3.41	2.58	2.21	....
1872	0.35	0.65	2.76	....	....	....	....	....	6.20	0.90	1.18	0.70	....
1873	5.34	0.57	1.50	3.93	3.23	2.20	5.43	3.61	....	2.50	1.30	....	....
1887	4.36	5.86	1.06	0.82	3.02	0.58	2.34	3.79	4.33	3.54	2.21	4.25	36.16
1888	1.40	1.56	3.19	2.08	5.16	0.98	3.20	5.66	1.89	3.10	3.27	2.61	34.10
1889	2.06	1.32	1.47	2.63	3.82	4.38	5.08	1.21	3.82	1.11	2.87	2.53	32.30
1890	3.24	1.18	2.64	2.17	4.25	6.97	0.78	2.38	1.90	4.53	1.79	0.78	32.61
1891	2.35	2.28	2.57	3.94	2.14	3.24	2.35	5.01	0.66	0.68	4.21	1.66	31.09
1892	1.53	1.18	2.28	3.59	8.29	12.83	4.48	2.74	2.36	1.28	1.63	2.26	44.45
1893	2.37	3.21	3.39	5.81	2.12	3.64	1.19	0.32	2.70	3.20	2.99	1.25	32.19
1894	2.96	1.95	3.17	2.49	2.76	1.87	0.62	1.79	7.07	1.68	1.93	0.96	29.25
1895	1.53	0.50	1.14	1.48	3.34	1.66	3.83	4.80	1.17	1.11	5.41	5.89	31.86
1896	1.21	1.93	1.71	4.17	6.99	2.62	5.60	2.68	7.56	0.36	4.10	0.32	39.25
1897	6.93	2.12	4.85	2.88	1.27	5.30	5.01	2.79	0.89	0.33	4.11	1.67	38.15
1898	5.17	3.19	5.65	1.49	4.98	5.86	1.13	4.63	4.29	5.30	2.92	1.99	46.60
1899	0.55	1.75	2.92	0.49	7.34	1.59	4.82	1.84	2.23	2.13	1.05	1.61	28.32
1900	1.68	3.72	2.23	0.78	4.17	2.94	3.55	3.28	1.99	2.83	2.23	0.41	29.81
1901	1.39	1.73	4.11	0.39	0.71	1.81	4.79	1.06	2.34	1.27	1.21	1.40	22.21
1902	0.47	2.05	3.14	2.16	6.18	13.19	7.43	2.32	7.29	2.02	2.93	1.71	50.89
1903	0.83	1.94	3.94	4.23	3.11	4.09	5.59	5.39	7.45	2.69	0.54	1.74	41.54
1904	2.12	1.47	5.02	4.21	2.51	1.96	3.81	5.62	5.05	1.53	0.06	1.69	35.05
1905	0.93	1.33	2.33	3.85	5.94	6.16	2.72	4.00	2.36	2.32	2.21	1.35	35.50
1906	3.10	2.52	2.12	1.57	3.10	1.67	2.12	3.80	8.31	2.25	2.64	2.48	35.68
1907	3.69	0.26	3.17	2.00	4.90	3.70	5.51	6.72	6.08	1.43	1.62	1.07	40.15
1908	0.81	3.80	3.58	3.10	7.19	1.43	4.50	5.35	0.95	0.67	2.02	0.97	34.37
1909	1.43	2.57	1.34	8.38	2.64	4.71	0.48	2.92	3.28	1.25	4.33	3.43	36.76
1910	2.35	0.82	0.36	3.96	6.20	0.50	1.66	4.04	4.47	1.20	1.44	1.11	28.11

EXHIBIT 91.

AURORA (No. 2), ILL. KANE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1879	.....	.....	.....	.....	.....	.....	0.38	1.56	0.76	2.40	4.17	1.70	.....
1880	4.08	3.55	2.25	4.36	6.10	3.91	5.63	7.46	3.22	2.14	1.03	0.76	44.49
1881	1.17	8.06	3.88	1.68	2.61	5.80	3.19	0.73	3.24	7.15	4.97	3.27	45.75
1882	1.14	2.95	2.83	5.98	5.04	7.33	3.89	4.70	1.39	3.21	2.10	2.47	43.03
1883	2.63	7.27	0.61	3.75	7.23	3.56	4.44	0.95	1.57	6.34	5.55	2.61	46.51
1884	1.24	3.74	2.30	2.66	2.26	2.18	6.38	2.48	2.42	4.61	1.90	4.59	36.76
1885	2.31	2.09	0.38	3.31	3.16	5.07	2.59	7.72	4.04	3.74	2.04	3.05	39.50
1886	3.63	1.76	3.00	4.24	5.39	1.27	0.36	2.97	5.60	1.80	1.26	1.18	32.46
.....													
1896	1.21	1.93	1.71	4.17	6.99	2.62	5.60	2.68	7.56	0.36	4.10	0.32	39.25

EXHIBIT 92.

CHEMUNG, ILL. McHENRY CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1894	....	....	1.52	3.34	3.02	3.56	.76	1.28	8.33	1.87	2.27	.60	.....
1895	1.47	.95	2.18	2.52	4.96	2.11	2.91	3.06	4.74	.66	2.10	2.59	30.25
1896	.99	1.93	3.48	6.78	4.18	3.18	5.10	2.27	8.56	1.06	2.52	.77	40.82
1897	5.06	1.77	5.25	4.66	1.67	6.36	4.73	2.00	1.18	.84	2.37	1.40	37.29
1898	2.89	2.73	4.25	2.20	3.71	5.97	2.54	5.66	2.72	3.41	2.09	.89	39.06
1899	.76	1.62	1.94	1.09	5.61	2.27	4.95	3.05	2.29	1.44	2.71	1.98	29.71
1900	1.49	3.73	1.49	1.36	1.78	2.11	4.73	6.96	4.67	2.57	3.83	.95	34.67
1901	1.43	1.27	4.54	.47	1.77	3.56	2.45	2.28	2.95	.66	.94	1.73	24.05
1902	.42	.80	1.83	.78	5.30	5.20	6.54	1.06	5.44	.....	.....	.....	.....

EXHIBIT 93

DELAN, WIS. WALWORTH CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1886	....	....	....	....	....	....	6.70	7.40	2.79	2.70	1.19	1.36	.....
1887	4.05	5.34	1.85	.88	3.11	.51	3.83	3.63	4.29	2.47	1.21	4.60	35.77
1888	1.22	.87	.00	2.41	4.39	3.94	2.25	2.25	.....	.....	.....	.....	.....
1889	2.07	2.23	1.86	2.53	5.25	3.21	.....	.....	.....	.14	1.69	2.09	.....
1890	2.49	1.98	1.45	2.30	4.69	.....	.....	.....	.....	.....	2.98	2.16	.....
1891	1.29	.69	1.19	3.05	2.55	.....	.....	.....	.....	.....	3.15	2.24	.....
1892	1.79	.75	.39	4.02	7.20	4.83	5.41	3.35	1.97	0.84	1.60	1.16	.....
1893	1.26	.66	2.31	4.79	1.66	5.03	3.49	1.43	2.60	2.68	1.17	.84	27.92
1894	1.09	.46	2.70	3.79	3.86	2.92	1.13	.50	6.44	2.11	2.13	.40	27.53
1895	1.00	.40	1.27	1.09	3.54	2.63	5.33	4.12	2.93	.40	1.93	2.23	26.87
1896	.59	.89	1.51	3.75	2.44	3.01	8.30	1.44	8.79	.79	1.42	.60	33.53
1897	2.59	1.00	2.97	4.87	1.02	4.85	2.32	1.53	1.11	.95	1.74	1.35	26.30
1898	1.59	1.11	3.63	1.96	2.77	6.21	2.59	4.58	2.80	4.55	1.11	.80	33.76
1899	.37	.....	.71	1.55	5.16	2.52	2.98	2.52	2.75	1.24	3.05	1.48	.....
1900	2.34	1.23	.74	1.18	.71	2.05	.....	2.75	2.47	3.28	.73	.07	.....
1901	.75	.65	3.15	.....	.....	.....	.....	.....	.....	.....	.46	1.60	.....
1902	.....	.....	.....	1.27	7.29	5.02	12.19	.57	4.36	1.26	.....	.....	.....
1903	.....	.....	3.41	2.77	3.61	1.44	4.76	6.49	5.33	3.13	.....	.....	.....
1904	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1905	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1906	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1907	.....	.....	.....	.....	.....	.....	.....	3.33	4.60	0.82	1.00	1.23	.....
1908	0.80	1.75	2.55	3.75	6.22	3.67	3.17	1.97	0.84	1.08	2.22	0.94	28.96
1909	1.83	1.54	0.73	7.60	3.42	3.50	1.94	9.80	3.58	1.05	2.95	3.45	41.39
1910	1.19	0.41	0.12	3.24	4.07	1.24	0.92	4.17	1.62	1.27	1.96	0.39	20.60

EXHIBIT 94.

DWIGHT, ILL. LIVINGSTON CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1888	1.03	1.43	3.10	1.42	4.46	2.10	2.44	2.27	.40	3.26	2.53	2.53	26.97
1889	1.47	2.82	2.23	2.12	4.24	6.34	6.12	0.89	2.92	1.79	3.10	1.79	35.83
1890	4.59	1.45	3.37	3.95	5.08	7.28	.90	2.05	1.30	.....	.....	.....	.....
1896	.....	.....	.....	.....	.....	3.13	4.61	2.61	5.09	0.64	3.54	0.11	.....
1897	5.34	1.46	3.57	2.74	1.81	5.25	2.50	1.60	.81	.44	4.77	1.59	31.88
1898	3.80	2.07	6.64	2.95	6.12	3.79	0.29	3.35	4.86	4.42	2.50	1.26	42.05
1899	.80	2.13	1.76	.70	2.08	5.07	4.73	2.29	2.57	2.31	2.03	2.06	28.53
1900	1.76	4.50	2.87	1.09	3.72	2.99	4.49	5.03	1.99	1.69	3.35	.42	33.90
1901	1.60	1.03	3.17	.50	1.93	3.71	2.00	1.67	2.05	1.44	1.14	2.54	22.78
1902	.44	1.43	3.82	2.10	5.72	11.53	7.52	3.62	5.36	2.09	3.11	1.49	48.23
1903	1.55	3.17	2.50	5.14	3.24	2.37	.....	.....	.....	.....	.....	.....	.....
1905	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.64	.....
1906	2.99	1.76	2.15	2.06	2.07	2.49	4.84	1.85	3.80	1.54	2.80	2.64	30.99
1907	5.38	0.14	2.22	2.56	3.13	2.88	8.85	7.30	6.34	0.45	2.02	3.01	44.28
1908	1.06	3.41	3.27	3.89	6.79	0.97	2.61	1.09	1.22	0.61	2.03	1.14	28.09
1909	1.73	4.29	1.79	7.13	2.48	6.06	1.50	3.53	2.34	2.38	4.24	2.96	40.43
1910	2.37	1.05	0.52	3.84	5.11	3.00	1.36	4.66	5.73	1.44	0.26	1.24	30.58

EXHIBIT 95.

ELGIN, ILL. KANE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1898	3.85	2.44	5.08	1.40	4.24	8.23	0.75	6.43	4.40	4.76	2.22	1.25	45.05
1899	0.57	1.60	2.72	0.68	5.28	1.89	4.31	1.89	2.28	2.39	1.38	1.69	26.60
1900	1.77	3.41	1.58	1.37	2.08	2.72	4.55	5.75	2.35	2.80	.....	.....	.....
1901	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1902	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1903	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1904	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1905	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1906	.....	.....	.....	.....	.....	.....	.....	.....	5.78	1.99	3.29	1.37	.....
1907	4.49	0.72	2.57	2.21	.....	.....	.....	.....	.....	.....	.....	.....	.....
1910	.....	.....	.....	.....	.....	.....	3.14	2.87	2.97	1.21	1.15	0.83	.....

EXHIBIT 96.

OSWEGO, ILL. KENDALL CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1887	.....	.....	.....	.....	.....	.....	1.01	2.90	2.29	2.03	1.78	3.63	.....
1888	1.46	1.54	2.77	1.59	4.67	1.29	3.58	1.09	1.22	2.73	3.21	2.22	27.37
1889	1.57	1.03	1.28	2.23	3.12	4.98	4.44	.75	3.44	1.00	2.83	1.91	28.58
1890	2.44	1.30	2.89	2.58	5.27	6.98	1.19	2.65	2.17	4.60	1.89	.75	34.71
1891	2.71	2.32	2.33	3.97	1.97	2.93	3.07	4.36	1.20	.64	4.42	1.93	31.85
1892	1.74	1.17	2.32	3.45	8.05	10.51	4.71	1.71	2.32	0.96	2.11	1.97	41.02
1893	1.85	3.16	2.68	4.80	2.59	3.27	1.99	.22	2.88	2.28	2.25	1.85	29.82
1894	2.31	1.10	2.68	2.82	2.82	2.20	0.50	1.49	7.35	1.34	1.79	0.77	27.17
1895	1.33	0.38	1.35	1.56	3.27	1.64	3.61	5.00	0.59	1.05	4.53	6.10	30.41
1896	1.09	1.90	1.71	3.48	7.52	1.75	5.32	4.03	7.51	0.31	3.30	0.15	38.07
1897	6.06	1.60	3.56	2.36	1.19	5.19	3.63	1.77	0.86	0.15	3.71	1.58	31.66
1898	3.86	2.59	4.11	1.48	5.50	4.51	2.23	3.75	3.81	4.32	2.81	1.52	40.49
1899	0.73	1.67	2.70	0.46	7.28	1.50	4.83	2.27	.....	.....	.....	.....	.....

EXHIBIT 97.

RILEY, ILL. MCHENRY CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1874	3.76	0.95	1.93	2.02	2.04	2.96	1.09	2.75	2.58	2.31	1.48	0.48	24.35
1875	1.38	1.95	1.01	2.33	3.28	5.26	4.24	2.14	7.29	2.76	0.72	2.32	34.68
1876	3.01	3.51	3.42	2.09	3.76	4.57	7.64	1.52	4.70	0.97	3.67	0.71	39.57
1877	1.72	0.03	5.53	2.81	0.93	4.83	1.96	3.60	0.21	6.07	2.90	3.38	34.47
1878	0.85	1.33	2.72	2.89	4.25	2.46	4.73	3.52	1.46	4.71	1.06	2.46	32.44
1879	0.85	1.54	1.15	2.30	4.97	4.81	5.68	1.96	1.20	1.38	5.30	1.47	32.61
1880	4.14	1.62	1.40	3.10	2.68	5.28	2.68	4.24	4.02	2.37	1.01	0.75	33.29
1881	1.54	5.28	6.48	0.98	3.10	5.62	5.88	1.01	5.47	6.81	2.36	2.69	47.22
1882	1.57	2.15	4.58	3.29	3.59	4.42	3.63	2.08	2.36	4.17	1.52	2.00	35.36
1883	2.18	4.61	0.89	2.00	6.18	3.92	2.94	1.17	2.04	4.28	4.03	1.67	35.91
1884	0.80	2.20	1.51	2.85	2.56	4.22	4.19	3.36	4.34	3.85	1.79	3.28	34.95
1885	2.32	1.92	0.29	3.97	1.72	5.80	2.07	6.80	3.86	2.57	2.09	2.37	35.78
1886	3.60	1.61	3.68	3.76	3.13	1.89	0.81	5.85	2.25	2.55	0.98	1.13	31.24
1887	3.59	4.82	1.01	1.55	0.95	1.23	2.70	4.85	4.61	2.75	1.87	3.31	33.24
1888	1.24	1.17	2.34	2.16	4.48	0.81	3.44	4.23	1.00	1.70	1.97	1.87	26.41
1889	1.86	1.21	1.56	2.48	4.09	3.25	3.44	0.77	1.68	0.40	2.34	1.44	24.52
1890	2.65	1.52	2.14	2.88	4.33	9.64	0.53	3.83	0.67	5.38	1.74	1.13	36.44
1891	2.22	1.65	1.64	4.05	4.38	5.06	2.40	1.95	0.87	1.16	3.75	2.16	31.29
1892	1.73	1.22	1.49	2.83	11.05	11.21	3.76	4.42	1.43	0.72	1.64	1.71	43.21
1893	1.57	1.55	1.82	3.71	2.99	5.13	2.32	0.45	4.18	2.47	2.34	1.42	29.95
1894	2.24	1.33	3.02	2.62	3.62	1.22	0.31	1.33	15.73	1.57	2.06	0.44	35.49
1895	2.09	0.46	1.32	1.81	2.91	1.68	3.43	3.94	2.16	0.41	2.69	3.00	25.90
1896	0.61	1.56	1.85	2.97	5.04	3.02	3.29	2.15	9.46	0.38	1.77	0.43	32.53
1897	4.45	1.49	3.87	2.59	1.08	3.23	1.57	1.24	1.15	0.48	2.52	1.50	25.17
1898	3.89	3.03	4.76	1.90	2.74	7.74	2.27	4.35	2.16	3.41	1.64	0.76	38.65
1899	0.44	1.21	1.65	0.76	4.61	2.56	4.04	2.36	1.59	1.72	1.44	1.56	23.94
1900	1.48	3.12	1.35	1.36	3.08	2.43	6.03	7.09	2.58	2.74	2.00	0.42	33.68
1901	1.38	1.69	3.38	0.26	1.10	2.37	3.23	1.15	2.01	0.86	1.05	1.22	19.70
1902	0.55	1.42	2.31	1.31	6.16	6.83	7.78	1.00	3.58	2.90	2.87	2.35	39.06
1903	0.80	1.33	3.47	3.36	3.29	1.65	4.61	6.52	6.43	1.97	0.82	1.66	35.91
1904	1.79	1.43	3.98	2.27	2.81	1.52	3.35	3.32	4.79	1.28	0.15	1.35	28.04
1905	0.82	1.69	2.73	3.31	7.46	6.32	3.30	5.85	2.38	3.89	1.57	1.40	40.72
1906	2.73	1.96	1.94	1.20	2.83	1.95	1.25	4.90	4.05	1.79	2.52	1.47	28.59
1907	3.67	0.38	1.68	3.09	4.29	4.84	4.92	3.55	4.90	0.50	1.20	1.16	34.18
1908	0.77	2.63	4.66	4.05	6.87	3.82	2.68	2.21	0.47	0.96	1.66	0.99	31.77
1909	2.50	2.58	1.10	7.70	1.62	3.37	0.63	6.25	3.37	0.72	3.91	5.05	38.80
1910	2.23	0.55	0.24	3.32	4.42	0.80	1.09	3.68	2.57	1.51	1.27	0.80	22.48

EXHIBIT 98.

ST. CHARLES, ILL. KANE CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1895	.....	.....	.....	.....	2.44	1.80	2.55	4.35	2.02	.....	.....	6.02	.....
1896	1.05	2.20	2.46	4.11	5.77	2.52	6.07	2.61	14.44	0.40	3.00	0.61	45.24
1897	6.04	1.99	4.37	3.47	1.41	2.69	3.41	1.67	0.60	0.28	3.36	1.48	30.77
1898	3.73	2.89	5.29	1.03	4.07	4.55	1.74	5.73	3.87	5.74	1.98	1.97	42.59
1899	0.85	2.12	2.68	0.58	5.62	0.92	6.00	2.10	3.10	2.20	1.31	1.93	29.41
1900	2.12	4.67	.....	.....	3.27	4.58	3.72	.....	2.15	2.36	3.27	0.64	.....
1901	1.53	0.88	2.76	.....	1.51	2.32	4.72	1.01	2.38	1.37	1.54	1.19	.....
1902	0.83	2.03	.....	2.11	7.90	7.36	6.85	2.67	6.65	2.19	2.98	1.84	.....
1903	0.54	2.55	5.17	4.04	3.71	3.08	6.89	4.83	6.60	1.39	1.06	1.94	41.80
1904	2.30	2.07	5.42	2.92	2.07	1.76	5.82	7.02	4.42	1.86	0.01	2.25	37.92
1905	0.99	2.78	2.73	3.59	7.80	3.46	2.70	4.25	3.23	5.66	2.42	1.74	38.35
1906	2.27	2.92	3.21	1.67	2.59	2.59	0.74	3.55	7.47	2.46	3.11	2.20	34.78
1907	4.17	0.70	2.94	2.16	4.15	4.90	5.45	4.12	6.49	1.53	.....	1.95	.....
1908	0.77	4.00	4.01	3.19	6.47	1.73	4.45	5.89	0.88	1.36	2.52	0.96	36.23
1909	1.38	2.74	1.32	7.14	2.46	5.50	0.33	6.58	3.59	0.99	5.27	4.44	41.74
1910	2.25	0.90	0.35	3.81	6.43	0.74	1.77	2.99	2.88	1.19	1.41	1.01	25.73

EXHIBIT 99.

SANDWICH, ILL. DE KALB CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1874	5.35	3.25	3.38	5.07	5.38	8.15	0.52	5.25	.....	.....	.....	.....	.....
1875	1.65	2.20	3.07	5.20	3.94	2.08	8.68	5.40	3.65	.....	1.07	4.30	.....
1876	5.92	6.63	8.77	5.26	8.17	.....	1.16	1.68	1.78	.19	3.20	1.32	.....
1877	1.53	.....	3.86	1.78	1.31	4.24	2.23	.80	.26	3.32	2.69	1.28	.....
1878	.70	1.17	1.18	.....	1.86	.....	2.70	.....	.....	.....	.....	.....	.....
1884	1.45	3.48	2.08	.....	2.10	3.24	7.06	1.93	2.52	4.95	1.46	5.33	.....
1885	2.85	3.05	.62	2.46	1.30	2.94	2.53	6.99	3.58	2.14	1.89	3.17	33.52
1886	4.17	.77	2.45	1.35	3.06	1.28	2.03	3.01	5.13	1.65	1.47	1.30	27.67
1887	4.55	5.41	1.24	.57	1.88	1.77	4.74	3.79	3.62	2.95	2.35	5.35	38.22
1888	1.45	2.59	3.20	1.70	5.14	2.76	4.68	3.83	1.26	2.95	3.33	2.36	35.25
1889	2.27	2.88	.87	3.15	3.08	5.40	3.67	0.79	3.12	1.47	2.63	1.82	31.15
1890	2.59	1.62	.....	.....	.....	7.54	.61	3.32	2.15	4.16	1.75	.33	.....
1891	2.52	4.13	3.80	4.70	1.57	3.34	3.18	3.87	1.62	.39	4.75	2.31	36.18
1892	1.68	1.37	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

EXHIBIT 100.

SHARON, WIS. WALWORTH CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1892	.....	.....	.....	2.96	7.11	7.91	3.31	2.46	2.23	1.81	0.85	0.97	.....
1893	1.71	1.94	2.39	5.99	1.69	4.22	3.02	1.20	1.66	3.90	2.35	1.82	32.89
1894	1.97	1.95	3.65	2.73	4.53	6.11	.80	.80	7.12	1.63	2.38	1.23	34.90
1895	1.20	1.27	1.34	2.13	3.86	3.15	4.07	3.49	3.85	.72	3.68	3.44	32.20
1896	.75	1.58	1.73	3.64	3.42	3.09	7.50	1.07	9.58	.74	2.49	.50	36.09
1897	4.11	1.55	3.86	4.49	1.57	5.33	1.96	.....	1.14	.79	1.54	1.07	.....
1898	2.48	2.26	2.96	2.24	2.41	8.37	2.66	.....	2.12	2.94	.92	.46	.....
1899	0.28	1.13	1.65	0.62	5.54	1.61	2.99	1.93	2.10	1.16	3.64	1.43	24.08
1900	1.61	2.42	1.43	2.94	1.84	1.84	5.61	.....	.....	.....	.....	.....	.....

EXHIBIT 101.

SYCAMORE, ILL. DEKALB Co.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1881	....	....	....	....	3.50	11.40	7.05	0.80	5.10	8.20	3.60	3.75	....
1882	1.31	1.90	4.85	6.10	3.80	7.90	4.35	2.34	1.94	4.55	2.25	2.25	43.54
1883	2.15	4.45	0.65	3.41	8.55	5.85	5.50	1.95	2.93	6.48	6.63	1.86	50.41
1884	0.71	2.15	2.02	4.06	3.18	4.53	8.84	3.43	3.46	5.76	2.48	4.14	44.76
1885	2.66	1.55	0.55	4.31	1.65	7.04	4.98	9.90	6.10	4.65	2.06	3.05	48.50
1886	4.10	1.85	3.85	5.14	4.24	2.27	0.67	4.29	3.23	2.26	0.96	1.54	34.40
1887	3.93	4.50	0.89	1.08	0.95	1.12	3.12	3.61	3.27	2.80	1.49	3.02	29.78
1888	1.01	1.16	2.59	2.05	5.50	1.27	3.10	4.03	1.09	2.37	1.80	2.16	28.13
1889	1.13	1.16	1.39	3.47	5.17	1.50	4.48	0.86	1.93	0.85	1.80	1.52	25.26
1890	1.64	1.15	1.57	2.58	3.87	7.98	0.42	2.07	1.22	3.48	1.87	1.50	29.35
1891	1.91	1.60	1.95	4.50	2.79	3.55	2.00	2.22	0.37	0.89	4.21	2.37	28.36
1892	1.73	1.21	2.01	4.81	11.77	11.23	2.56	3.56	1.62	0.95	2.13	2.06	45.64
1893	1.83	2.12	2.22	4.59	3.25	5.04	3.65	0.46	3.83	1.13	2.74	2.19	33.05
1894	2.50	1.35	3.26	2.87	3.90	1.79	0.78	0.95	7.88	1.77	1.96	0.74	29.75
1895	1.35	0.30	1.03	1.24	2.52	2.20	3.10	3.06	0.75	0.55	3.71	3.38	23.19
1896	0.50	2.03	1.44	2.74	3.80	1.59	3.60	0.58	8.39	0.26	1.88	0.55	27.36
1897	4.64	1.31	4.31	3.78	1.10	6.04	3.03	1.06	0.44	0.38	3.38	0.81	30.28
1898	3.28	3.57	5.42	1.65	3.20	3.47	1.22	6.47	3.71	4.81	1.76	0.80	39.36
1899	0.37	1.59	2.14	0.96	3.32	1.19	4.04	1.39	1.73	2.44	1.33	1.41	21.91
1900	1.63	3.00	1.96	1.15	2.83	2.22	5.60	11.17	2.79	2.27	2.23	0.53	37.38
1901	1.27	1.19	3.86	0.44	1.63	1.88	4.51	1.06	2.18	0.71	1.32	1.30	21.35
1902	0.70	2.72	3.27	1.96	7.97	9.00	7.83	2.27	4.29	3.10	2.95	2.02	48.08
1903	1.83	1.87	3.10	4.76	3.16	2.70	7.14	5.14	6.88	2.57	0.97	2.38	42.50
1904	1.31	1.52	4.66	2.91	3.51	2.57	4.04	6.49	5.24	0.84	0.03	2.16	35.28
1905	0.50	1.45	2.98	3.14	6.59	4.30	3.20	6.52	1.06	4.61	2.20	1.66	38.21
1906	2.99	3.03	3.06	1.80	4.40	3.17	1.36	3.34	6.09	2.02	3.40	1.84	36.50
1907	3.88	0.30	1.49	2.66	4.59	4.57	4.99	3.28	7.39	1.26	1.42	1.17	37.00
1908	0.79	2.93	3.31	4.60	7.01	4.12	3.06	3.46	1.00	0.86	2.05	1.50	34.69
1909	1.72	1.97	1.60	10.09	2.97	3.27	0.62	7.08	3.95	1.19	5.42	5.27	45.15
1910	1.25	0.77	0.23	3.78	4.81	0.78	1.50	4.22	1.80	2.04	1.10	0.63	22.91

EXHIBIT 104.

YORKVILLE, ILL. KENDALL CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1900	....	1.72*	1.70	0.79	4.17	2.14	3.84	4.23	2.53	2.83	2.66	0.13	.....
1901	1.17	1.26	4.05	0.31	0.67	1.71	3.34	0.80	3.36	1.08	0.99	1.23	19.97
1902	0.56	2.05	2.70	1.15	7.06	14.44	7.99	2.96	8.23	1.80	3.23	1.80	53.97
1903	0.80	1.78	3.23	3.14	3.01	4.72	5.07	5.15	6.76	2.40	0.36	1.53	37.95
1904	2.05	1.74	4.96	5.23	2.79	1.91	3.88	4.21	3.82	1.44	0.00	2.18	34.21
1905	0.63	2.12	2.38	4.04	5.96	4.62	3.90	2.91	1.77	1.68	2.46	1.41	33.88
1906	1.94	0.83	1.31	1.97	5.09	2.20	1.61	3.90	10.25	2.40	1.44	1.85	34.79
1907	3.68	0.17	2.58	1.55	4.60	5.22	6.23	6.37	5.21	1.07	1.25	0.83	38.76
1908	0.78	2.10	2.20	....	6.18	1.65	3.96	5.90	0.95	0.75	1.84	0.72	.....
1909	1.06	1.70	0.85	8.41	2.21	5.21	2.24	2.09	3.32	1.41	4.82	1.46	34.78
1910	1.49	0.46	0.07	4.16	4.49	1.02	1.59	3.90	5.58	1.32	1.05	0.80	25.93

Remarks: * 11 days only.

EXHIBIT 105.

FORREST, ILL. LIVINGSTON CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1897											4.56	....	.....

EXHIBIT 106.

LEXINGTON, ILL. MCLEAN CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1895	1.23	.21	1.06	3.42	1.23	2.29	9.16	2.89	5.87	.76	2.80	6.83	37.75
1896	1.09	1.87	.53	3.62	6.22	4.58	7.18	5.47	....	....	....	0.15	.....
1897	5.67	2.51	4.01	2.70	1.68	1.59	6.38	.50	.70	.32	4.19	1.47	31.72
1898	4.62	2.11	5.17	2.13	6.09	2.21	1.32	2.44	5.23	4.06	2.09	1.18	38.65
1899	1.00*	....	....	....	....	....	....	....	....	....	....	....	.....

Remarks: *.92 occurred in 23 days. Total fall for month estimated 1.00.

EXHIBIT 107.

MINONK, ILL. WOODFORD CO.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1895	....	....	....	....	....	....	....	....	....	.87	4.03	6.33	.....
1896	1.26	1.44	1.08	3.64	5.50	3.87	5.33	2.67	4.53	0.20	2.32	T	31.84
1897	5.14	1.45	3.18	2.93	1.05	2.57	2.93	.92	1.90	.13	0.92	1.20	27.32
1898	4.21	1.78	5.00	2.87	6.84	2.92	.58	4.76	5.47	3.86	2.13	1.04	41.46
1899	.50	1.79	2.24	1.58	4.59	3.75	2.19	1.74	4.20	3.47	.95	2.31	29.31
1900	1.30	4.45	3.02	1.16	3.09	1.40	2.21	6.43	2.54	2.24	2.66	.37	30.87
1901	1.49	1.31	3.60	.61	2.41	2.50	2.40	.75	1.92	.75	.78	1.87	20.39
1902	.48	1.41	3.89	2.23	2.43	9.41	7.76	8.56	4.59	1.59	3.15	1.79	47.29
1903	0.71	2.16	2.80	4.65	3.23	4.12	6.24	4.49	7.14	2.23	0.92	1.47	40.16
1904	2.51	1.48	3.95	2.75	3.70	1.61	6.23	2.69	4.14	0.17	T	1.43	30.66
1905	1.16	1.06	1.97	3.88	4.54	3.35	2.07	2.59	2.64	2.10	1.68	1.42	28.46
1906	1.89	1.43	1.95	.92	1.62	2.46	1.66	2.51	4.37	1.50	2.04	1.99	24.34
1907	3.99	.06	1.72	2.59	4.14	4.19	5.72	3.91	3.82	.44	1.89	2.46	34.93
1908	.80	3.83	2.42	4.06	8.77	1.21	1.88	1.62	0.39	0.69	1.60	0.67	27.94
1909	1.62	3.50	1.68	5.62	2.56	3.31	1.98	3.32	1.98	2.43	3.83	2.90	34.73
1910	1.45	1.08	0.03	3.63	4.52	4.07	1.31	2.46	3.91	0.93	0.33	1.16	24.88

EXHIBIT 108.

PONTAIC, ILL. LIVINGSTON Co.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1885	....	....	....	....	....	....	....	....	....	1.90	0.60	2.79	....
1886	0.75	....	2.50	1.90	2.99	1.28	0.82	0.80	4.28	0.32	0.68	0.55	....
1887	0.92	3.85	1.11	1.20	1.15	0.28	0.13	1.60	1.01	0.93	0.77	3.20	16.15
1888	1.40	1.43	2.38	0.90	5.70	3.85	4.32	0.65	0.47	2.35	1.37	1.20	26.02
1889	1.39	0.97	1.53	1.35	5.50	2.42	4.65	0.11	3.80	1.62	3.10	1.65	28.09
1890	4.18	1.20	3.58	4.15	3.65	5.10	0.75	1.95	0.35	2.61	1.45	0.30	29.27
1891	0.95	2.45	2.88	3.45	0.47	6.07	2.65	3.95	0.20	1.40	4.70	2.40	31.57
....													
1903	0.80	3.23	2.54	4.94	4.36	1.39	6.35	2.60	3.62	2.76	1.06	1.98	35.63
1904	3.92	1.84	5.73	3.63	2.67	1.95	5.37	2.45	5.79	0.17	0.06	2.14	35.72
1905	1.80	1.89	2.17	3.45	6.33	1.70	1.78	1.82	2.26	2.53	2.26	1.71	29.70
1906	3.07	1.78	3.28	2.18	1.77	2.35	2.39	0.80	3.56	1.61	2.58	2.62	27.99
1907	5.62	0.15	2.74	3.09	3.28	3.00	5.66	4.47	4.59	0.61	2.04	3.05	38.30
1908	1.01	4.52	2.90	4.83	8.72	1.65	2.35	1.25	1.53	0.92	2.61	1.51	33.80
1909	2.58	4.30	1.81	5.96	3.05	2.90	2.29	3.75	2.15	2.33	4.00	3.32	38.44
1910	1.78	0.97	0.20	4.07	5.04	2.14	1.25	4.39	4.10	1.69	0.82	1.73	28.18

EXHIBIT 109.

STRAWN, ILL. LIVINGSTON Co.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1899	....	....	....	1.04	3.41	4.07	1.80	.74	3.79	2.60	1.78	2.73	....
1900	0.95	3.76	2.11	1.12	3.76	....	2.65	5.94	1.50	1.64	4.52	.71	....
1901	1.46	1.18	3.59	1.07	2.77	4.22	2.37	3.00	2.52	3.22	1.00	2.64	29.04
1902	.97	1.70	3.55	2.39	3.59	14.00	....	....	5.67	....	....	....	....

EXHIBIT 110.

STREATOR, ILL. LA SALLE Co.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly
1893	....	....	....	6.17	3.21	0.96	....	....	3.00	....	2.80	0.97	....
1894	1.90	0.44	2.95	1.03	3.62	2.53	....	....	....	....	....	2.10	....
1895	1.55	0.30	1.40	0.41	0.80	....	6.00	2.60	1.90	1.00	4.54	5.89	....
1896	1.30	1.15	0.65	2.63	5.98	3.27	5.75	1.52	3.44	0.05	2.07	0.10	27.91
1897	5.65	1.55	4.08	1.88	1.13	6.70	2.71	1.07	1.10	0.23	4.20	1.32	31.62
1898	3.43	1.62	6.93	3.00	6.00	3.24	0.62	2.96	4.20	2.99	2.47	0.77	38.23
1899	1.28	1.82	....	0.45	2.50	1.82	5.22	1.69	2.73	2.47	1.23	1.93	....
1900	1.49	3.54	2.85	1.24	2.44	1.63	3.13	7.13	2.56	2.18	2.57	0.34	31.10
1901	1.42	1.40	3.49	0.75	1.24	2.85	3.02	2.56	2.20	0.63	1.38	2.15	23.09
1902	0.79	1.32	4.66	2.17	4.37	10.64	8.59	7.11	5.26	3.24	3.48	1.74	53.37
1903	0.90	2.52	3.79	4.81	2.48	2.07	2.43	4.04	7.60	1.02	0.78	1.78	34.22
1904	2.23	1.55	5.76	3.91	4.46	2.11	4.60	2.39	4.15	0.20	T	1.57	32.93
1905	1.07	1.38	2.20	4.22	4.77	3.01	4.10	2.15	2.39	2.64	1.73	1.41	31.07
1906	2.26	1.99	2.77	1.40	1.79	3.10	1.39	2.25	4.25	1.64	2.75	3.06	28.65
1907	5.64	0.10	3.02	2.92	3.70	3.95	7.61	5.08	5.58	0.51	2.06	1.41	41.58
1908	0.59	3.73	2.53	4.15	7.16	1.69	3.62	0.41	0.39	0.68	2.36	0.92	28.23
1909	1.37	3.45	1.81	6.61	2.76	4.79	2.60	3.31	2.74	2.21	3.73	2.85	38.23
1910	2.25	1.03	0.41	4.20	5.13	2.98	0.81	5.38	4.59	1.43	0.43	1.81	30.45

3480 Order adjourning court until Monday, December 2, 1912, at 11 o'clock.

3481 December 2, 1912, 11 A. M.

Court met pursuant to adjournment.

F. E. CALDWELL, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is F. E. Caldwell. I reside at Havanna, Illinois. I am fish commissioner of the State of Illinois. I have resided at Havanna 50 years. Am acquainted with the Illinois River, particularly from La Salle to Grafton.

3482 The State of Illinois has a steamer which is used in the prosecution of its fish preservation work, the name of which is "The Illinois." It is 139 feet long, 28 feet wide. It is a light draft boat, about 30 inches, but it takes more water of course to run it.

I have been chief warden of the state for seven years, but I have been connected with the service for twelve years.

I have been acquainted with the Illinois practically all my life. I was raised on it. I have known the river
3483 probably intimately for 16 years. Since 1900, when the Sanitary District channel was opened I have noticed some little difference in the Illinois River. In my judgment and opinion the difference, comparing the low water period with low water period the height of the water is from 10 to 14 inches. It would vary a great deal according to the rainfall, but in a general way I would say about 12 inches.

I have noticed the tributary streams of the Illinois River. The tributary streams of the Illinois River carry
3484 considerably more water now on account of the drainage than they did ten or twelve years ago.

I am familiar with the levee conditions in the vicinity of Havanna. I constructed the largest one down there, the Lacey levee. There are three levee districts immediately adjacent to Havanna, the Lacey, the Langilier and the Otter Creek Districts. The Lacey and Langilier districts extend about three and four-fifths miles along the river. The Otter Creek District does not touch the river. It lies right back of the Langilier District. Before
3485 the Langilier and Lacey Districts were put in near Havanna the width of the river was about seven and one-half miles straight across from bluff to bluff. In high water the river is 5,600 feet wide.

I know the high water of 1892. I have not seen any high water in the river as high as the July water of 1892.

3486 I have been over the Illinois River many times between La Salle and Grafton. The Illinois River as it was in times of high water before the drainage systems were put in, was more of a sluggish nature, did not rise as quick nor it did not fall as rapidly. Now it seems that the river will commence rising and it will rise very rapidly and unless the Mississippi is very high it will fall about as rapidly as it rises.

3487 I have known of back water in the Illinois River on account of the Mississippi River to come up to the Campsville Dam. That would be about 41 miles.

I know about the drainage districts in my vicinity and up and down the river. They all have pumping stations in connection with them that I know of. I do not
3488 know what quantities of water the districts will discharge into the river but it is an enormous amount. The drainage districts in the Illinois River have been constructed within the last 15 years, most of them within the last six years.

I am acquainted with the stretch of river above the

Henry Dam. The steamer Illinois is in commission from
 3489 April 1st to November 15th as a rule. During the four
 years I was with it practically all the time; the last
 three years I have only been with it occasionally. Now,
 probably once or possibly twice a week for the last three
 years. Captain Spear had charge of the steamer at such
 times as I was with him. He was master and the en-
 gineer was William McKinly. They have been with the
 steamer all the time I have been connected with it.

3490 *Cross-Examination by Mr. O'Connor.*

I have never had any connection with the Sanitary Dis-
 trict of Chicago. I have not been in La Salle during low
 water since last June, July and August, I mean this year.
 When I speak of La Salle I mean Peru.

3491 I should judge the river at Peru is about 650 feet wide.

I would imagine the depth of the water is 11 or 12
 3492 feet. I made no soundings to ascertain its depth. I
 don't think I know any day in the last summer, in the
 year 1912, when I can tell how deep the water was, how
 much water there was at the Peru bridge either in the
 month of July or the month of August. I cannot tell
 you any specific day in any year. I have formed my
 idea from the observation of the nets that are fishing

3493 illegally in the river. For instance you take a net this
 year that is fishing at a certain time, in certain water,
 and it is a five-foot net with the hoops half way out.
 The next year you will find the same place, the same
 sized net is entirely submerged. Those are the things
 I formed my opinion on. I recall years when I saw
 them out of water and years when in the summer time
 I would see them completely submerged in substantially
 3494 the same place. It was along the east shore or the
 opposite shore along Peru there, commencing just at the
 bend and going south half a mile down the river, just

around the bend probably 500 feet I would imagine. I saw it submerged between the 15th day of April and the first day of May five years ago, and three years ago if I remember distinctly.

At Peru I have noticed the water is more of a bluish
 3495 color than it was before the Sanitary District water was turned in. Prior to that time the water was somewhat sluggish and dirty. Very little current along the side, the current was out in the center if it was any place.

3496 We had no trouble bringing our boat up there prior to the year 1900. We go up the channel on the north side where the bank is steep. We dock there by keeping close to the north bank where the old dredge used to come in.

I don't know how much blue water it would take to give a stream a blue appearance. I think it would de-
 3497 pend a whole lot on the condition of the water before it was mixed. Where a clear fresh stream comes into a mucky river, you will notice there is a difference in the clearness of the water for a certain distance around the point where the two streams come together. I did
 3498 not have in mind a clear stream running into a larger stream of dirty water. I had in mind a stream coming down off the bluff and that muddy water you will see
 3499 for miles down the river, that is at the side that it comes in. You will see a perfect stream all the way down for miles on that side.

3500 The Sanitary District water I think it carried about 38 miles before it reaches Peru. I have not noticed the same bluish condition at a point farther down stream unless it is in the summer time when there is no rain. I don't know that I ever noticed it at Henry. I am familiar with the character of water that comes from the Kankakee at Kankakee and at Wilmington.

3501 I don't recollect having made any observations as to whether the combined waters of the Sanitary District and the Desplaines River are greater or less in quantity than the Kankakee River at the point where these two streams come together. It has been 90 days since I last saw the rivers at said point. I did not see them with any purpose in view except in the line of by business.

3502 The highest water was in 1892. It was a flood year. Prior to that in 1883, another flood year. It was higher than the water of 1892.

Our boat draws 30 inches of water when it is stand-
 3502 ing still. Running 18 miles an hour you ought to have 15 feet of water for good navigation. Need lots of water. Have always had high water on the Mississippi River. The level of the Mississippi water got higher than the level of the Illinois water, it backs the Illinois up. I have noticed a change in the Spoon River; the
 3504 others I have not noticed. I have noticed that the Mackinaw below Pekin, comes out with greater force and more rapidly and comes in a volume.

The Illinois River is the largest stream and its tributaries for the most part are small creeks.

This diking I spoke of was done to reclaim bottom
 3505 lands. These lands were always submerged. The work has been going on for 15 years.

Re-direct Examination by Mr. Chipperfield.

The nets I spoke of I saw three years ago when they were about half in the water. And five years ago when
 3506 they were entirely submerged. I would imagine the current in the Illinois River is between three and four miles an hour.

Re-Cross Examination by Mr. O'Connor.

Right now at this time. I would take it from the point I am most familiar with at Havanna or Peoria. It would not be quite as much at Peoria, I don't think, as it would where the river is narrower. It was five years ago when
 3507 I saw the net in a certain place submerged and about three years ago in the same place the net was half submerged. The general inference I drew was that there had been a rise in the river of about one foot. Five
 3508 years ago there was a difference of two and one-half feet of water, compared with where the nets were three years ago and that was the only incident I had in mind on which I based my conclusion that the river has increased from 10 to 14 inches. I said half way. It might
 3509 have been. It might have been less and and it might have been more. It was simply an illustration. That
 3510 would just be one of the instances that would show a person that there was a difference in the water.

CHARLES SPEAR, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipfield.

My name is Charlie Spear, I reside at Havanna. I am 46 years of age. I am a captain, pilot and general river man. I am captain and pilot of the Illinois. I
 3511 have been following the river since 1881. I have been on all the boats that Captain Sibley ever owned and on the steamer Eleanora, for seven years, and been on the Illinois for four years. The Sibley line has headquarters at Peoria and Havanna. They had six or seven boats. I have been a licensed master and pilot every since I was 21 years old. I have been over the entire Illinois River but I could not say how many times. I

3512 know the whole stream. I have acted as pilot over the entire stream. I knew the Illinois River before 1900 and since.

I think there is a difference since the Sanitary District of Chicago was opened January 17, 1900, in the low water of the Illinois River as compared with the low water before that time. My best judgment is it would be 10 or 12 inches.

3513 I have noticed the tributary streams as they come into the Illinois River as compared with eight or ten years ago. They used to go dry. I haven't noticed any of the creeks dry lately.

I know the location of the Henry Dam and about the river filling up above the dam. It has been about five years ago we boated the timber off on a point of land just above the dam there about Beardstown, and we loaded our barges there drawing four feet. I had a double trip to get into the lock and shove the barges through the mud to get back into the lock just above the Henry Dam. That has been five or six years ago.

I don't know the width exactly at the Henry Dam. I think it is about six or seven hundred feet.

3514 Before 1900, in low water there was hardly any current; now there is about three miles of current most every place.

I am familiar with the levee and drainage districts along the Illinois River. Before the construction of these levee and drainage districts, along the Illinois River, from Pekin down, in times of extreme high water it extended from bluff to bluff. I think the greatest width is about three miles at Havanna. I think it was 1902 it took out all the roads across from Havanna and shut off navigation there on the bridge. I took a flat boat and boated some fellows across the river, ferried them across the river and I landed here against the bluff at Sepo. I

think the bluff from the Mason County side over there was three miles. With these drainage districts, in times of high water, the river is a whole lot narrower.

3515 I have observed the high water on the Illinois River. The highest water I ever personally observed I believe was in 1892 and it might have been six or eight feet higher than any other high waters we have had since.

The steamer Illinois is the steamer with which Mr. Caldwell and Mr. McKinley are connected. My territory as master and pilot covers the Illinois River and tributaries from St. Louis to Keokuk on the Mississippi.

3516 *Cross-Examination by Mr. O'Connor.*

I think the high water was in 1892. Nothing has been said to my mind that recalls the year. That has not been
3517 talked over between me and anybody else.

The river is from 10 to 12 inches higher; that is getting down pretty close. I did not measure it. I have not talked the proposition over within the last week. Steamboat men are always talking over the river, whether it is rising or falling.

3518 I first knew I was going to be a witness when I was called a day or two ago, when I was asked about the rise in the river. I was asked about the difference and I put it from 10 to 12 inches. I never made any measurements with a rule. I have put lots of barges over the dam and we watch that very close, you know in putting barges over the Henry Dam. I have measured the water lots of times with a rule when the water would rise. We are interested in that and I put out a mark and I kept it from time to time, whether it raised a foot or two feet. But when this water was turned in I wasn't watching that very close.

3519 I remember when it was turned in. It was turned in in January, I don't know exactly what year. I don't

know how long afterward I first noticed any change in the river. I was fishing in the vicinity of Havanna. A part of the time it was frozen over at Havanna.

The first time we noticed any rise in the river we
3520 did not notice over a foot of rise.

Recess taken to 1:15 P. M. same day.

3521 December 2, 1912, 1:15 P. M.

Court met pursuant to adjournment.

CHARLIE SPEAR, a witness for the defendant, being recalled for further cross-examination by Mr. O'Connor, testifies as follows:

In the month of January when I say there was a rise in the river after the opening of the Sanitary District channel, it was just the ordinary stage of water. I could not state the stage. My best recollection is it was 1900. It was not a very low stage. I have seen the
3522 water very low in winter. Ordinarily there is a pretty good flow of water in the river during the month of January. I next noticed an effect when it would rain; the river would rise. That water did not come from the district channel. That water has always showed its
3523 effect on the Illinois River. Then I noticed the water in the summer time did not get as low as it usually did. When it would rain the water would become muddy. Before 1900 the river always cleared up during the winter and was dirty during the rainy season. When the water was low it was sluggish during the summer months. I was acquainted with the river at Peru. I never floated any rafts or anything around Peru, but I know that
3524 the current was very slow before 1900. There is more current since the water was turned in there. The ap-

pearance of the water is a little clearer, always clearer when it is high.

I never sounded the water at the Peru bridge before 1900. It was always deep there. I had no occasion to sound the water. I have no marks or anything of that
 3525 kind in my mind that enable me to determine the rise in the level of the river since the year 1900, has been from 10 to 12 inches, only the river is always a little higher, always more water in the river. The dams for one thing at Copperas Creek and at Henry. I noticed we could go over the dam at Copperas Creek longer than we used to with a steamboat drawing from $2\frac{1}{2}$ feet to 32 inches. We would go over Copperas Creek sometimes when we were
 3526 dragging a little drawing 30 inches. By dragging I mean scraping the bottom. The difference I have noticed is we used to get down until there would be possibly a foot or a foot and a half of water going over the dam, and now it is three feet or more at a longer time during the year. Of course it would be just enough to make the difference. I could not say just exactly what the difference in the rise of the river would be. Probably a foot or a little more.

3527 I should judge the river where it crosses over Copperas Creek Dam is about the same width as at Henry, six or seven hundred feet. And before it comes to the dam there is a considerable flow along in a straight direction. I think the increase would be approximately the same as it would be at a point further up the river, although where it is narrower it ought to raise the water a little more.

3528 The Henry Dam is upstream from the Copperas Creek Dam a little over 50 miles. I have not run over the Henry Dam very much or through the locks. I boated timber through there about five years ago. We ran over the Henry Dam some this year. Almost every month during

the summer of this year with the Illinois, which draws 30 inches. When the boat is coaled down it draws 30 inches. We always slow down very slow in going over either dam, less than four miles an hour. We dragged once crossing the dam this summer. I could not mention the month ex-
 3529 actly, I could tell by looking at my log what month.

I don't know about the flash boards being used at Henry. The increase in the rise of the river is simply given from general observation. The flow of the river is now I think three miles an hour at all times. Of course when the water is high in the spring it is more than that. It is less than three miles an hour in some of the deep
 3530 water. When the river is higher the speed is faster. I have no notion as to the speed of the river prior to 1900. I have tried to float a pan of fish from Liverpool down. I know it would take a whole day, eight miles, practically no current, and I think now it is three miles an hour.

They have been constructing levees down there for some time.

3531 I remember all the high water ever since I came on the river but I don't remember the year. I remember there was high water in 1883 and 1892 and 1902.

Re-direct Examination by Mr. Chipperfield.

The first levee I remember being constructed was constructed about fifteen years ago. The District was started, the Lowe and McGinnis levee across from Beards-
 3532 town, or the Christian Lowe. There was no levee constructed at the high water of 1892. Mr. Traut was engineer of the district.

I have seen more than three feet of water on the dam since 1900, and have seen less.

3533 GLEN W. TRAER, a witness for defendant, being sworn,
testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Glen W. Traer. I reside in Chicago. I am a coal operator. At the present time I am interested only in the operation of mines at Danville, Illinois. I have been interested in several of the districts in the state in the past. In times past I have been interested in the La Salle District.

I am acquainted with the coal proposition throughout the La Salle District, something more than twenty years.
3534 I am acquainted in a general way with the region in which are situated the lands claimed by the La Salle County Carbon Coal Company which lie across the river from Peru and La Salle. I don't know their property individually. I observed the property which was pointed out on the map this noon.

Q. Now, I will ask you to state in a general way if you have an opinion as to the fair cash market value of that property after January, 1900? A. As a coal property, yes.

Q. You may state what in your judgment and opinion was the fair cash market value of that property?

Mr. O'CONOR: We object, your Honor, unless the whole property is included.

Mr. CHIPPERFIELD: Well, we are including the property.

The COURT: I think I will let him answer.

Mr. CHIPPERFIELD: You may state, Mr. Traer.

Mr. O'CONOR: Pardon me. Is the time fixed?

Mr. CHIPPERFIELD: Yes, sir.

Mr. O'CONOR: I thought you said simply after 1900.

The COURT: Well, the question is perhaps objectionable, that feature of it.

Mr. CHIPERFIELD: Well, the theory on which I am proceeding is this, if your Honor please. I want to show the
 3535 value of that property after that date up to and including this, and if your Honor please, unless the court is familiar with a couple of decisions, I want to call your Honor's attention that we have the right to show up to that time as bearing on the question of its value. I have the opinions here. I laid them out, thinking perhaps the court might wish me to produce them, and I have them there if there be any question about it.

The COURT: If I understand your question to include asking for an opinion of the witness as to the value of that property, the market value of the property at the present time——

Mr. CHIPERFIELD: No, it is not that.

The COURT: If you do, I will sustain the objection.

Mr. CHIPERFIELD: No, it is not that. It is the value of the property shortly after 1900.

The COURT: Well——

Mr. O'CONOR: We object, unless it is confined to the proper period of time, your Honor, to the same limits we were confined to.

Mr. CHIPERFIELD: May I produce an authority, your Honor?

The COURT: Yes.

Mr. CHIPERFIELD: Now, in the case of Springer against the City of Chicago, 135 Ill., page 552, the court uses this language:

3536 "Evidence of the value of the property at the time of the trial is competent, as having a bearing on the value of the property. Evidence of the value before and after the time when the damages are alleged to have been sustained is admissible."

3537 Q. You may state, Mr. Traer, what in your judgment

and opinion was the value of this property shortly after 1900?

The COURT: There is no objection to that.

Mr. O'CONOR: I don't know what the questioner's idea of shortly is, your Honor.

The COURT: You know as much as I do.

Mr. CHIPERFIELD: They may find out on cross-examination what that is.

The COURT: You know as much about it as I do.

Mr. O'CONOR: We object unless he states some definite time.

The COURT: I think I will sustain the objection to it.
3538 To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Very good. Now, I can make things pretty short. I want to offer to prove by this witness that the value of the coal rights, shortly after January, 1900, in and to all the property described in plaintiff's declaration was \$50 an acre, for coal purposes.

The COURT: I think this. I think you are entitled to
3539 prove the general condition of the property at the present time, the physical condition, the circumstances and situation and all those things, but I doubt whether you are entitled to prove the market value at the present time.
3540 I think if it is restricted to the time of the alleged injury or alleged damage, I will allow you to do it. I feel as if
3541 I ought not to allow you to take an opinion of the witness as to the present fair cash market value of the land if they object to it. If they don't object to it I will allow you to do it.

Mr. O'CONOR: The objection so far was to the form of the question that he put. I don't know what he means by shortly.

Mr. CHIPERFIELD: That is for the witness to say and for you to find out, and I don't mean that as a short

answer. It is for you to find out on cross-examination what the witness means.

Mr. O'CONOR: That is not the policy we were forced to pursue, your Honor.

The COURT: Well, that is the question here now.

Mr. O'CONOR: I want the record clear as to what our objection is made to, not as to the proof but as to the form
3542 in which it is sought to be produced.

The COURT: You have objected and I have sustained the objection.

Mr. CHIPERFIELD: All right. I will ask you to state, Mr. Traer, what in your opinion was the fair cash market value of this property in 1900?

A. In my opinion the property in 1900, was worth about \$35 or \$40, its cash market value as a coal property, plus whatever value the surface of the land may have added and that I do not know. I do not know what the value was or is.

Q. I will ask you to state in your judgment and opinion what was and is the fair cash market value during the year 1912 prior to the date of giving your testimony in this cause.

Objection by plaintiff; objection sustained; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Q. I will ask you to state, Mr. Traer,
3543 what in your opinion and judgment, was the fair cash market value of this property in the year 1905?

Objection by plaintiff; objection sustained; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Q. You may state, Mr. Traer, what in your judgment and opinion was the fair cash market value of this property in the year 1904.

Objection by plaintiff; objection sustained; to which

ruling of the court, the defendant by its counsel, then and there duly excepted.

3544 Q. I will ask you to state what was the fair cash market value of this property in the year 1903? A. In my opinion it was worth \$50 an acre as a coal property in 1903 plus whatever the value of the surface may have been.

Cross-Examination by Mr. O'Connor.

I have answered questions only in relation to the coal that underlay the ground. My answers are directed simply as to the value of the coal. Taking the coal property alone, thinking of it alone, I don't think turning the water into the Illinois River would increase or diminish the value. The river would have no effect upon its value.
3546 The flooding of land underlaid with coal would not increase the value of the coal.

3547 EDWARD T. BENT, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is Edward T. Bent. I reside in the City of Chicago. Am engaged in the coal mining business at Oglesby, just south of La Salle and at Rutland. Oglesby is $2\frac{1}{2}$ miles by rail and about four miles by wagon road from La Salle. I am acquainted with the premises of the La Salle County Carbon Coal Company lying east of the Peru road on the south side of the river, also lying east and west of the Illinois Central right of way and east and west of the C., B. & Q. right of way across from Peru and La Salle.

I am 50 years old and have been engaged in the coal mining business at Oglesby all my life. Our mine is located less than two miles from the lands you described.
3548

I have an opinion as to the fair cash market value of those lands after 1900.

Q. You may state what, in your opinion, was the fair cash market value of the land which I have described to you, I will say shortly after January, 1900?

Mr. O'CONOR: We object to that.

Objection sustained; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Q. You may state, Mr. Bent, what in your judgment and opinion was the fair cash market value of those lands, say, in January, 1900?

A. About \$50 an acre, exclusive of the surface for other purposes than coal mining.

3549 R. A. CARTER, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chiperfield.

My name is R. A. Carter. I reside at Ottawa. I am engaged in the grain business; have been all my life. I have given attention to the grading of corn and am familiar with the grades of corn as established by the inspection department of the State of Illinois. The grades
3550 are No. 1, No. 2, No. 3, No. 4, and sample. Sample is the grade they used to call no grade, anything under No. 4. No. 4 corn is anything that will test under 22, I mean 22 per cent. in moisture.

I have examined the corn in the cribs on the land occupied by the La Salle County Carbon Coal Company. The cribs are down near La Salle and Peru. There was one long crib south of the river and west of the Illinois Central. I made an examination of that corn. That corn
3551 was a pretty poor grade of corn, it would not go better than sample grade. I should say there was around 1,000

to 1,200 bushels there. The corn was green. To the best
 3552 of my knowledge I should say the corn was worth about
 30 cents. No. 4 corn varies from 35 to 40.

I have had an opportunity to see and inspect high land
 corn this year. A large per cent. of that will grade No.
 4 and the remainder, a small per cent. of it going sam-
 3553 ple grade and a small per cent. is going No. 3. The ma-
 jority of the corn that is raised this year or that I have
 seen this year is grading below 22. I think there was 26
 or 27 per cent. moisture in the corn that I say was sample
 grade. No. 4 is under 22 and sample grade anything
 above that.

3554 I saw another crib there which we examined up near
 the shaft. It was right in there by their cars. Went
 right up where they had their props. It was a good sized
 3555 crib; there was some old corn and some new corn. The
 new corn in the crib would grade No. 4. To the best of
 my knowledge its market value would be 35 or 36 cents.

We found also another crib which was south of the
 river and across the river from Peru. The corn in that
 crib was sample grade and in my opinion was worth 30
 cents per bushel. There were three cribs there, a double
 crib and a single crib there together, that was all the
 cribs. In that crib I did not figure it up, but I would
 3556 estimate that there was at least 3,000 bushels there in
 the double crib and single crib together. I would figure
 that there was 3,000 bushels of corn. The ears were an
 average size. It was mixed as to color, part white and
 part yellow.

3557 The two cribs I said would grade No. 4, was fairly well
 matured. The other cribs were green.

Cross-Examination by Mr. O'Connor.

I live in East Ottawa; moved there about July 1st. I
 went to examine this corn on the 30th of November, three

3558 days ago. The first crib we examined was over south of the river and west of the Illinois Central. I don't know whether that was the crib of Michael Charley of La Salle or not. I don't know whether that is the crib in which he put the corn he raised on the bottom, the portion that he farmed this year. That corn was sample grade. It was too wet and too green to grade.

There isn't any No. 1 grade corn, nor hasn't been any
3559 No. 2 new corn on the market. No. 2, without reference to whether it is old or new, would be worth about 50 cents in the country. No. 3 is about 41; sample, about 30. It depends whether the price of corn is increased somewhat during the past ten years. Corn is about as low now as it has been in ten years.

I don't know anything about the expense of raising the crop.

The next crib that we saw was a crib up near the shaft,
3560 over across the river. There was 800 to 1,000 bushels of new corn. We estimated that that corn would grade No. 4. That is not the lowest grade; sample grade is the lowest.

The other cribs were located south of Peru, two double cribs and one single crib and contained about 3,000 bushels.

3561 R. A. Center was with me. Mr. Malone was with me.

3562 I did not notice any worms in the corn. We examined it very carefully, took it out, broke the ear and dug down into the cribs.

Re-direct Examination by Mr. Chipfield.

Number 3 corn has to test under 19½ per cent. of moisture. I cannot tell offhand what No. 2 is, there is so little No. 2, we don't figure on it.

3563 R. A. CENTER, a witness for defendant, being sworn, testifies as follows:

Direct Examination by Mr. Chipperfield.

My name is R. A. Center, I live in Fall River Township La Salle County. Business, farming. I have made a study of the grading of corn. I have been in the grain business five years and have been farming all my life the rest of the time.

Saturday last I made an inspection of corn on the premises of the La Salle County Carbon Coal Company. The ribs were located, two of them south of La Salle and one south of Peru. Mr. Carter was with me. We
3564 inspected the cribs together. The first crib we visited the corn was what we would call sample grade. That is, corn that won't grade. No. 4, is the next grade above that. The corn that was in that crib was worth about 30 cents a bushel. I could not tell the number of bushels because I did not take that in view at all.

3565 The next crib we inspected was a double crib by the coal shaft. It was part old corn and the other half was new yellow corn that would grade No. 4. The corn was worth five cents a bushel more than the other. I cannot state how much there was in the crib.

The other crib was a double crib and a single crib south of Peru. Big white and yellow corn that would go sample grade. It was worth about 30 cents a bushel. I did not estimate the number of bushels.

Q. Now, have you seen or observed the corn that is raised this year on the uplands? A. Only my own.

Q. Was that upland corn? A. Yes, sir.

Q. What did that corn grade?

Objection by plaintiff; objection sustained; to which
3566 ruling of the court, the defendant by its counsel, then and there duly excepted.

The sample grade corn that I saw was what I would term large ear corn; the No. 4 is not. I don't know whether corn on the uplands this year is grading better than No. 4. The corn was partly dented, a portion of it
 3567 was glazed and a portion was not. I should judge about half of it was dented and about half of it was glazed. Mr. Carter and I were together.

Cross-Examination by Mr. O'Connor.

3568 There were two large cribs and a single crib that would not grade. One double crib would grade. One place south of Peru there was a double crib and a single crib. Another place a single crib and another place a double crib. Those were all the cribs we examined. The other cribs were farther east, probably about south of La Salle
 3569 near the coal mine at Jones. The corn south of Peru would not grade.

WILLIAM V. MCKINLEY, a witness for defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipersfield.

3570 My name is William V. McKinley. I reside at Havana, Illinois. I am a marine engineer. Chief engineer of the steamer Illinois. I have been in the service of the state about twenty years. I have been connected with the Illinois eleven years; prior to that time I was chief engineer on the Reindeer. It was a state boat. I have held a license as an engineer on the Illinois River for twenty-six years. Before that I was a pilot on the Havana and several other boats, I don't know just what
 3571 they were now. I was not a licensed pilot at that time.

I am acquainted with the Illinois River and have known it all my life. I am forty-seven years old. I was ac-

quainted with it before 1900 from one end of the stream to the other. Since 1900 there has been a small change in the level of the river at low water mark. There 3572 has been an increase in the water about twelve or fifteen inches at low water, as near as I can recall.

The highest water I ever knew was in 1892. I have not known it to be as high since that time. I have had a chance to see and observe the tributary streams of the Illinois as they flow in. During the last eight or ten years there have been more freshets in them; that is, when a rain would fall it would raise them quicker. Since 1900 the current of the river has increased. Before 1900, I suppose it was a mile and a half. Since that time it is three miles and a half an hour.

3573 As engineer I kept the log of the boat. It gives me a chance to tell how much better time we make up the river at different times at different stages of water. I note on the log the time it takes to traverse certain distances. The difference in our time down the river and up the river is about three miles an hour as a general thing.

Before any of the drainage districts were put in the Illinois River was in places three or four miles wide. 3574 Since the districts have gone in the width of those places is not over half a mile. The place at Havana. It is also true at Beardstown for quite a distance.

I recall about the time of the opening of the district channel. I made no observation concerning it, as I was on the Mississippi River at that time.

3575 No cross-examination.

MARTIN HOUSTON, a witness for defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Martin Houston. I reside at Pekin, Illinois. I am a pilot on the Illinois River; forty-three years of age. I have been a pilot for twenty-three years. The last seven years I have been with the Swain people. I am now with the steamer Percy Swain. The headquarters of the Swains are at Peru or La Salle, rather in the basin. We run from La Salle to Peoria. I have put in ten years on that run; not steady, but off and on. Seven years steady. Make the round trip every other day from the first of April until the 25th of November, with the exception of two months, then every day during the summer season.

When our boat is lying at La Salle it is lying at the Peru dock. They are about two blocks above the Peru
3577 bridge, I should judge a mile and a quarter from lock 15.

I am familiar with the Illinois River from Grafton to La Salle, the head of navigation as they claim. I have never been above La Salle with a steamer. Have been up with a gasoline boat. I have run the Fred Swain, the Davis Swain and the Percy Swain, the City of Peoria, steamer Isabelle, G. M. Sidley and Speed. I
3578 have been up and down the Illinois River between La Salle and Peoria every season within seventeen years.
3579 Hard to say how many times I have made the trip. During July and August every day, and every other day from April 1st until the 20th or 25th of November. I have observed the high and low water. I remember the high water of '92. I was at Pekin at that time. There was a hard rainfall raised the river very rapidly and broke in through some of the levees. The water came

down with such a rush it couldn't get through those narrow places. The levees being along the river it would make narrow places and wouldn't let it back water as it used to and it had to go somewhere. Since 1892 I have
3580 not seen as high water to my knowledge.

Since 1900 I have observed a difference in the Illinois River between that time and the time since, so far as low water is concerned. The water does not get down quite as low. It is about the same in low water season. It is according to the wet weather and dry weather as we have it. There isn't very much difference to be noticeable. In dry weather the water gets down so we have to use the locks at Henry when we are going through. In high water we can go over the dam.

I know a boat man by the name of Hawley. I know his boat. I remember at one time he was stuck at a bar right above the Henry locks. We had to pull him off. I cannot say how long ago that was. It was in the neighborhood of six years.

3581 Before 1900 the water got very stagnant. There wasn't much of a current. There wasn't any to speak of at all. Perhaps a quarter of a mile to the hour. Since 1900 there is at low water, I should judge, three miles an hour. As a pilot we notice the current of the stream
3582 to a great extent as we go through it. It is at low water I would judge something in the neighborhood of twelve to thirteen or fourteen inches since 1900. I haven't taken very particular pains to notice only running the dam and such as that, and landmarks along the river where we land. I know by that.

I have seen the bottom lands across the river from Peru overflowed in times of high water. Seemed to be seven or eight feet of water. The river spreads out over the low land. It rises quick and goes down quick. A narrow stream and can't go through it as it should and makes an overflow.

I have noticed the tributaries along the Illinois River in the last eight or ten years. The creeks that used to be
 3583 dry are running water the year around nowadays. Most of them full of water, running water; that is, not full, but there is running water; they don't go dry. The higher the water increases the current is pretty swift. I should judge since 1900 there has been a current of six or seven miles an hour in high water. I think the current is swifter now than before.

3584 I know the river is filling up so that in a good stage of water it is difficult to get through above the dam at Henry. I have observed that for five or six hundred yards. Our boat draws thirty inches.

I have noticed the drainage districts down the river. They narrow the channel to a great extent.

3585 I have never done any boating on the Mississippi. I am engaged in the freight and passenger business from Peoria to Peru and La Salle.

Cross-Examination by Mr. O'Connor.

The stuff settling in the river back of the Henry dam is sand and mud brought in there from the creeks and the drainage of land which washes in and the farm lands being tiled. I know of farm lands back which have more or less been tiled and ditched out to dispose of the high water and rainfalls. I have seen where they were tiling and seen the creeks as they flowed into the Illinois River. They make sand bars which the government is taking
 3586 out. That has been going on for the last seven or eight years as I remember; had not been so much before. I cannot say how much land above the Henry dam has been drained into the Illinois River in the last seven years. I have been hunting over it.

3587 The spring freshets take more land than they leave. They bring more land to the river than they did before

the land was tiled. I think most of the soil comes from the surface of the lands.

3588 I have seen rainfalls when the water would run two feet from the banks of the river for a quarter of a mile. That washes in and fills up a bar. They did not do that to a great extent before the timber was cut off, which gives it a chance.

I notice a difference in the color of the water itself. It is purer and cleaner. I have seen it when it was filthy;
3589 you couldn't stand it to eat a meal along the Illinois River. That was around Lacon and Havana. The fish all died. We never see any more of this and don't have the stagnant odor.

3590 Have noticed the water at Peru since the Sanitary Distrist water was turned in. As a rule there has been eight to twelve feet of water there. The Peru bridge, I should say, is five or six hundred feet wide. There has been a change in the speed of the river as much as at other places. There was always a little more current there. I should judge the current is two and a half miles during the summer months along there.

3591 I have noticed the water is clear all along from Peru to Peoria. We have several bars from Peoria to Peru that gets very shoal on us during low water.

The levees I speak of was the Pekin levee as being affected in 1892. I remember the high water of 1902. I couldn't tell the difference between the two by the
3592 gauge. Before 1892 the high water was in '83 or '84. In high water the river is swifter now than it used to be.

I could not say, but I know we have a good current. It
3593 is faster to my best judgment. I know it makes more speed that it did before. In high water it runs off faster.

3594 Cannot judge the speed of high water as well as when the water is down in its banks.

3595 E. B. SPENCER, a witness for defendant, being sworn,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is E. B. Spencer. I reside in Chicago. I am in the employ of the Sanitary District as photographer. I have been engaged in the business of photography thirty-five or forty years. I understand the science of making and developing pictures and have been familiar with this work forty years. I make pictures for the Sanitary District. I use a camera with a regular standard lens. When I say regular standard lens I mean a
3596 regular rectilinear lens. I mean a corrected lens. The pictures are 5x8. The pictures I make are correct reproductions of the objects photographed, and show the objects in their true proportion to each other. No exaggeration or distortion.

In the pictures concerning which you are about to ask me I used this lens in all cases. Concerning the development of these pictures, I went into the field and made
3597 the exposure and brought them home and went into the dark room and developed them. As a result of the development process which I used nothing appears in the picture which did not appear in the negative, except the number. They were in no way manipulated or changed. The number on the picture with a pen is put on backwards so as to appear correctly on the photograph. The numbers are put on for a file number and the date and year they were taken. The pictures have
3598 not been retouched or anything. They each truly, correctly and accurately reproduce the scene that was taken by me.

I have a number of these pictures. I believe there are two or three of them not numbered.

I have a view of the Chicago harbor.

Photograph produced and marked Exhibit 112.

That is the entrance to the Chicago River from Lake Michigan. The building on the right is the government life saving station. The tower in the distance is the government light. There is a breakwater shown on the 3599 picture. This is the entrance of the Chicago River from the lake.

3600 I have a view of the entrance of the Chicago harbor and Chicago River showing a boat leaving the Chicago River and entering the harbor outward bound.

Which said photograph was marked Exhibit 113.

I have a picture bearing the number 2287 containing a view of the Chicago River at the State street bridge, the bridge in the distance being the Dearborn street bridge.

Which said photograph was marked Exhibit 114.

3601 I have a picture bearing number 3916 which is a view of the Metropolitan bridge over the Chicago River just north of Van Buren street, showing the channel of the Chicago River at that point.

Which said photograph was marked Exhibit 115.

I have a picture numbered 3918, being a view of the Van Buren street bridge open and the Metropolitan bridge in the distance closed.

Which said photograph was marked Exhibit 116.

I have a picture, No. 3934, a view of the Chicago River at Polk street, looking north, showing the Polk street bridge under construction.

3602 Which said photograph was marked Exhibit 117.

Picture No. 3933 is a view of the Chicago River at Fourteenth street.

Which said photograph was marked Exhibit 118.

I have a view of the main channel of the Sanitary District of Chicago at Willow Springs.

Which said photograph was marked Exhibit 119.

I have a view of the great curve on the drainage channel at Romeo, looking upstream.

Which said photograph was marked Exhibit 120.

Photograph No. 1593 is a view of the Bear Trap Dam showing a discharge at the time of the taking of the view of 300,000 cubic feet per minute.

Which said photograph was marked Exhibit 121.

I have a view of the windage basin at Lockport, Illinois, No. 1378.

Which said photograph was marked Exhibit 122.

I have a view of the tailrace of the Sanitary District of Chicago immediately below the Bear Trap Dam which connects the main channel of the Sanitary District with the Desplaines River, made at a time when the Bear Trap Dam was closed and no discharge entering the tailrace.

Which said photograph was marked Exhibit 123.

I have a view from the same point, the only difference being the discharge is 300,000 cubic feet per minute passing over the Bear Trap Dam into the tailrace. My number is 3280.

Which said photograph was marked Exhibit 124.

Photograph No. 327 is a view of the junction of the Sanitary District tailrace and the Desplaines River a short distance below the Bear Trap Dam, taken at a time when the Bear Trap Dam was closed and no water discharged from the main channel of the Sanitary District.

Which said photograph was marked Exhibit 125.

Photograph 3281 shows the same view as the last stated with the addition of 300,000 cubic feet per minute flowing from the main channel of the Sanitary District.

Which said photograph was marked Exhibit 126.

3604 Photograph 158 shows a view of the Desplaines River

looking northeast upstream from the Summit highway bridge

Which said photograph was marked Exhibit 127.

The photograph 169 shows a view of the Desplaines River looking downstream from the Summit highway bridge.

Which said photograph was marked Exhibit 128.

Photograph 170 is a view of the Desplaines River looking upstream from the Willow Springs highway bridge.

Which said photograph was marked Exhibit 129.

Photograph 171 is a view of the Desplaines River looking downstream from the Willow Springs highway bridge.

Which said photograph was marked Exhibit 130.

Photograph No. 172 shows a view of the Desplaines River looking upstream from Lemont highway bridge, the bridge in the foreground being the Santa Fe Railroad bridge.

Which said photograph was marked Exhibit 131.

Photograph No. 173 is a view of the Desplaines River looking downstream from the Lemont highway bridge.

3605 Which said photograph was marked Exhibit 132.

When there appears to be a date on these photographs it means the picture was taken on that date.

Photograph No. 793 is a view of the Desplaines River at Riverside showing flood conditions.

Which said photograph was marked Exhibit 133.

Photograph No. 794 is a view of the dam across the Desplaines River at Riverside.

Which said photograph was marked Exhibit 134.

Photograph No. 4104 is a view of the Atchison, Topeka & Santa Fe tracks between McCook, Illinois, and the Desplaines River bridge near Lyons, Illinois, showing the main line of tracks of the Santa Fe Railroad.

Which said photograph was marked Exhibit 135.

3606 Photograph No. 4103 shows the territory north of the Desplaines River at Summit, Illinois.

Which said photograph was marked Exhibit 136.

Photograph 4100 shows the highway north of the Desplaines River between Summit and Lyons, Illinois.

Which said photograph was marked Exhibit 137.

Photograph 2707 is a view at Romeo on the Desplaines River.

Which said photograph was marked Exhibit 138.

Photograph 2706 is a view of the Romeo highway a short distance from the Desplaines River.

Which said photograph was marked Exhibit 139.

Photograph 2704 is a view of the east branch of the Desplaines River between Romeo Island and the main channel of the Sanitary District, the spoil banks of which are shown in the distance, together with the view over the main channel leading to the Village of Romeo.

Which said photograph was marked Exhibit 140.

I have a photograph No. 2705, being a view of a branch of the Desplaines River along the east side of Romeo Island, highway shown running east across the main channel of the Sanitary District.

Which said photograph was marked Exhibit 141.

Photograph No. 2701 is a view of the highway bridge at Lemont, Illinois, a portion of which was destroyed in the Desplaines River flood of March, 1904.

Which said photograph was marked Exhibit 142.

Photograph No. 810 is a view of the west dam across the Du Page River at Channahon, Illinois, the east dam being about 500 feet east of the end of the dam in this view.

Which said photograph was marked Exhibit 143.

Photograph No. 812 is a view of the Du Page River near Smith's bridge, showing the mouth of the Du Page River where it enters the Desplaines River, looking downstream.

Which said photograph was marked Exhibit 144.

Photograph No. 657 is a view of the bridge over the Yellow River at Knox, Indiana.

Which said photograph was marked Exhibit 145.

Photograph No. 650 is a view of bridge over ditch about a mile and a half north of Knox, Indiana; bridge shown in picture is one which is being erected to replace one washed out.

Which said photograph was marked Exhibit 146.

View No. 651 shows the new Kankakee River looking downstream from bridge near Jackson Island Club, Indiana.

Which said photograph was marked Exhibit 147.

Photograph No. 652 shows the new Kankakee River looking upstream from bridge near Jackson Island Club, Indiana.

Which said photograph was marked Exhibit 148.

Photograph No. 653 is a view of the old Kankakee River, about a quarter of a mile from the bridge near Jackson Island Club, Indiana, looking downstream.

Which said photograph was marked Exhibit 149.

Photograph No. 655 is a view of a drainage ditch about a quarter of a mile from the old Kankakee River near Jackson Island Club, Indiana.

Which said photograph was marked Exhibit 150.

Photograph No. 658 is a picture of the bridge over the old Kankakee River between San Pierre and Wilders, Indiana.

3609 Which said photograph was marked Exhibit 151.

Photograph 656 is a view of the drainage ditch about one mile from the old Kankakee River.

Which said photograph was marked Exhibit 152.

Photograph 659 shows a view of the new Kankakee River between San Pierre and Wilders, Indiana.

Which said photograph was marked Exhibit 153.

View No. 660 shows the Mockler ditch near Wilders, Indiana, looking upstream.

Which said photograph was marked Exhibit 154.

View No. 661 shows the Mockler ditch near Wilders, Indiana, looking downstream.

Which said photograph was marked Exhibit 155.

View No. 798 shows a dam in the Kankakee River at Waldron, Illinois.

Which said photograph was marked Exhibit 156.

3610 View No. 797 shows the Kankakee River and bridge at Waldron, Illinois.

Which said photograph was marked Exhibit 157.

View No. 795 shows the Iroquois River looking towards the Kankakee River.

Which said photograph was marked Exhibit 158.

View No. 796 shows the Iroquois River looking upstream from the Kankakee River.

Which said photograph was marked Exhibit 159.

View No. 1334 shows the dam in the Kankakee River at Wilmington.

Which said photograph was marked Exhibit 160.

View No. 1335 shows the Kankakee River at Wilmington, Illinois, showing the highway bridge looking downstream.

Which said photograph was marked Exhibit 161.

View 1336 shows the bridge over the creek at Wilmington, Illinois, which empties into the Kankakee River.

Which said photograph was marked Exhibit 162.

3611 View 702 shows the mouth of the Kankakee River at Dresden Heights and the mouth of the Desplaines River shown near the bank of crushed stone near right of the picture. View shows portion of cofferdam in place about half way across Desplaines River. Illinois River begins at this point and runs south, parallel to Illinois and Michigan Canal. Dresden Heights Bluffs are shown in the

distance. The Kankakee River at this point being nearly 1,000 feet, Kankakee being shown at the right of the picture, and the point projecting into the river immediately in the foreground at left of the picture.

Which said photograph was marked Exhibit 163.

View 2660 shows an ice gorge in the Desplaines River looking upstream from a point near the mouth of the Desplaines and Kankakee Rivers.

Which said photograph was marked Exhibit 164.

View 2663 shows a view of an ice gorge in the Illinois River, the mouth of the Kankakee River being shown at the right of picture and the mouth of the Desplaines River at the extreme left.

Which said photograph was marked Exhibit 165.

3612 View No. 1056 is a view of the E. J. & E. bridge over the Illinois River at Divine looking upstream.

Which said photograph was marked Exhibit 166.

View 809 is a view of the bridge over the Aux Sable River, about ten miles above Morris, Illinois.

Which said photograph was marked Exhibit 167.

View 707 shows the mouth of the Aux Sable in the distance, looking towards the Illinois River.

Which said photograph was marked Exhibit 168.

View 1310 shows a view of stone bridge over the Aux Sable River just above the mouth of the Illinois River and near the Aux Sable locks on the Illinois and Michigan Canal.

Which said photograph was marked Exhibit 169.

3613 This picture shows a view of the Aux Sable River just north of the stone highway bridge above the mouth of the Aux Sable River and near the Aux Sable locks about eight miles above Morris, Illinois.

Which said photograph was marked Exhibit 170.

View 1331 shows the Mazon River looking upstream three miles southeast of Morris, Illinois, showing new bridge over river.

Which said photograph was marked Exhibit 171.

View 1332 shows the Mazon River looking upstream about three miles southeast of Morris.

Which said photograph was marked Exhibit 172.

View 1333 is a view of the junction of the Mazon and Illinois Rivers about 1,000 feet above Morris highway bridge over the Illinois River.

Which said photograph was marked Exhibit 173.

- 3614 View 1059 is a view of the Morris highway bridge over the Illinois River looking downstream from a point near the mouth of the Mazon River.

Which said photograph was marked Exhibit 174.

View 1063 is a view of the Kankakee and Seneca Railroad bridge over the Illinois River looking upstream one mile east at Seneca, Illinois.

Which said photograph was marked Exhibit 175.

- 3615 View 806 is of the Mazon River near the Pleasure Club House, southeast of Morris and about three miles above its junction with the Illinois River, looking downstream.

Which said photograph was marked Exhibit 176.

View 807 is a view of the Mazon River looking upstream from the same point as shown in picture 806.

Which said photograph was marked Exhibit 177.

View No. 142 is a view of the Marseilles dam across the Illinois River, looking north, showing the gates at head-race at right of picture, view taken looking north.

Which said photograph was marked Exhibit 178.

- 3616 View 1007 is a view of the Illinois River with the Marseilles dam drowned out by an ice gorge, view shown looking southeast.

Which said photograph was marked Exhibit 179.

View 1009 is a view of the Illinois River and the Marseilles highway bridge taken from the north end of the Marseilles dam.

Which said photograph was marked Exhibit 180.

View 784 is a view of the junction of the Fox and Honey Rivers at Burlington, Wisconsin.

Which said photograph was marked Exhibit 181.

View 785 is the bridge over the Fox River at Burlington, Wisconsin.

Which said photograph was marked Exhibit 182.

3617 View No. 780 shows the dam in the Fox River at Elgin.

Which said photograph was marked Exhibit 183.

View 781 is a view of the Fox River at Elgin, taken at the watch factory.

Which said photograph was marked Exhibit 184.

View 782 is a view of the watch factory bridge over the Fox River at Elgin.

Which said photograph was marked Exhibit 185.

View 778 is the west dam in the Fox River at Aurora, Illinois.

Which said photograph was marked Exhibit 186.

View 1337 is the Fox River at Aurora, Illinois.

Which said photograph was marked Exhibit 187.

3618 View 623 is of the Fox River looking upstream from Dayton highway bridge four miles above Ottawa.

Which said photograph was marked Exhibit 188.

View 800 is the Fox River taken from the Dayton highway bridge, looking upstream.

Which said photograph was marked Exhibit 189.

View No. 624 is a view of the Fox River a short distance above Dayton highway bridge, four miles above Ottawa.

Which said photograph was marked Exhibit 190.

I also have another view of the Fox River taken at the same point.

Which said photograph was marked Exhibit 191.

View 625 is a view of the Fox River bridge at Dayton, looking downstream.

Which said photograph was marked Exhibit 192.

3619 View 801 is of the Dayton highway bridge from the Fox River, looking upstream.

Which said photograph was marked Exhibit 193.

View 803 shows the Main street bridge over the Fox River at Ottawa, Illinois.

Which said photograph was marked Exhibit 194.

View 802 shows the mouth of the Fox River where it enters the Fox River at Ottawa.

Which said photograph was marked Exhibit 195.

View 1068 is a view of the Illinois River showing the Ottawa highway bridge, view taken from the C. B. & Q. Railway bridge at Ottawa, Illinois.

Which said photograph was marked Exhibit 196.

3620 View No. 804 is a view of the Vermillion River, looking downstream, at Streator, Illinois.

Which said photograph was marked Exhibit 197.

View 805 is a view of the Vermillion River, looking upstream from the same position from which Exhibit 197 was taken.

Which said photograph was marked Exhibit 198.

View 1323 is a view of the Vermillion River, looking downstream at the highway bridge at Streator, Illinois.

Which said photograph was marked Exhibit 199.

View 1325 is the Vermillion River at Streator, Illinois, looking downstream.

Which said photograph was marked Exhibit 200.

3621 View 1326 shows the dam across the Vermillion River about two miles above Streator, Illinois.

Which said photograph was marked Exhibit 201.

View 1329 is Bailey's falls in the Vermillion River about four miles above the mouth of the Vermillion River.

Which said photograph was marked Exhibit 202.

View 1330 is a view of the rapids in the river near Bailey's falls, about four miles above the mouth of the river.

Which said photograph was marked Exhibit 203.

View 90 is a view of the Illinois River taken below the Shippingsport bridge at La Salle, Illinois, looking northwest, the plant in the distance being the zinc works at Peru; the land claimed by the Carbon Coal Company being on both sides of the river.

Which said photograph was marked Exhibit 204.

View 91 is a view of the Carbon Coal Company's alleged lands opposite the mouth of the Illinois and Michigan Canal, Peru being shown at the right hand of the picture.

Which said photograph was marked Exhibit 205.

View 98 is a view looking north from Mr. Boers' residence in Section 28, Peru being shown in the distance, the land claimed by the La Salle County Carbon Coal Company in the center of the picture.

Which said photograph was marked Exhibit 206.

View 93 is of the south side of the Illinois River just east of the south end of the Peru highway bridge, the zinc works being shown in the distance.

Which said photograph was marked Exhibit 207.

View No. 92 is a view of the south end of the Peru highway bridge from the south end of the Peru highway 3623 over the Illinois River, looking southwest.

Which said photograph was marked Exhibit 208.

View No. 87 is of the land on the north side of the river, between the Illinois Central and C. B. & Q. Railways.

Which said photograph was marked Exhibit 209.

View No. 74 is looking south from the Illinois and Michigan Canal opposite the electric light works at La Salle, showing Huse' slough in the distance and Shippingsport belong Huse' Lake.

Which said photograph was marked Exhibit 210.

View 75 shows lands along the south side of the Illi-

nois and Michigan Canal at the basin opposite La Salle and north of Huse' Lake looking west.

Which said photograph was marked Exhibit 211.

3624 View No. 199 is taken from the Riddle Rock looking northwest, showing the south side of the river and Carbon Coal waste bank and the City of La Salle in the distance.

Which said photograph was marked Exhibit 212.

View 207 is the Illinois River taken from the south side of the river, showing the C. B. & Q. and Illinois Central Railroad bridges, looking north on the lands in question in this case.

Which said photograph was marked Exhibit 213.

View 235 is the spoil bank of the mine just east of La Salle, looking southeast towards the mouth of the Vermillion River, showing the land claimed by the La Salle County Carbon Coal Company on the north side of the river.

Which said photograph was marked Exhibit 214.

View No. 226 is taken from the south end of the Peru highway bridge, looking west, along the south bank of the Illinois River.

3625 Which said photograph was marked Exhibit 215.

View 227 is a view looking east from the Peru highway bridge, showing corn field on the south side of the Illinois River.

Which said photograph was marked Exhibit 216.

View 225 is a view of Section 21 in the southwest quarter of Section 21, near McCormick's slough.

Which said photograph was marked Exhibit 217.

View 214 is a view of a portion of Section 21 looking north, Peru being shown at the left hand of the picture and La Salle at the right hand of the picture is the distance.

Which said photograph was marked Exhibit 218.

View 213 is looking northeast along the north bank of the Illinois River from the La Salle highway bridge over the Illinois River.

3626 Which said photograph was marked Exhibit 219.

View 210 is looking south from the Illinois and Michigan Canal basin opposite the electric light works at La Salle, showing a portion of Section 22.

Which said photograph was marked Exhibit 220.

View 209 is taken from the south side of the Illinois and Michigan Canal basin opposite the electric light works in La Salle, looking west, showing a portion of Section 21.

Which said photograph was marked Exhibit 221.

View 206 is taken on the south side of the Illinois River looking southwest from the south end of the Illinois Central Railway bridge.

Which said photograph was marked Exhibit 222.

View 205 is a view of a field west of the C. B. & Q. Railroad and the north bank of the Illinois River, taken from the Illinois Central Railroad bridge.

Which said photograph was marked Exhibit 223.

3627 View 204 is a view taken from the Illinois Central Railroad bridge looking northwest towards La Salle, showing corn field between the Illinois Central and C. B. & Q. Railroads, and the spoil bank of the La Salle County Carbon Coal Company being shown at the right of the picture.

Which said photograph was marked Exhibit 224.

View 203 shows the field south of the Illinois River, taken from the top of the Illinois Central Railroad bridge at the north bank of the river, looking southeast, Oglesby being shown in the distance.

Which said photograph was marked Exhibit 225.

3628 View 202 is taken from the Illinois Central Railroad bridge looking east, showing a field along the south side

of the river in the foreground, the La Salle County Carbon Coal Company's waste bank at the left of picture in the distance, corn growing on the La Salle County Carbon Coal Company's land on the north side of the river.

Which said photograph was marked Exhibit 226.

View 529 is of the Illinois Valley bottoms looking north towards Peru, Illinois.

Which said photograph was marked Exhibit 227.

View 531 is the Illinois Valley bottoms looking north below Peru, Illinois.

Which said photograph was marked Exhibit 228.

View 535 is of the field just west of the Peru highway, south of the Illinois River, McCormick's slough being shown at left of picture.

Which said photograph was marked Exhibit 229.

3629 View 539, taken from the Illinois Central Railroad bridge looking northwest, showing corn field along bank of the river, La Salle, Illinois, being shown in the distance.

Which said photograph was marked Exhibit 230.

View 540 is a field on the north bank of the Illinois River between the La Salle highway and the C. B. & Q. Railway bridge, La Salle being shown in the distance.

Which said photograph was marked Exhibit 231.

View 541 is looking west from the La Salle highway across the lands in Section 22 involved in this suit.

3630 Which said photograph was marked Exhibit 232.

View 773 is of the Illinois bottoms in Sections 21 and 22 involved in this suit, taken from a point along the Illinois and Michigan Canal basin opposite the electric light works in La Salle, Illinois.

Which said photograph was marked Exhibit 233.

View 774 is a view of the corn fields between the La Salle highway at the north end of the highway bridge

over the river and the C. B. & Q. Railroad, looking north-east.

Which said photograph was marked Exhibit 234.

View 935 is a view of the Illinois Valley bottoms from the south bluff looking northeast towards Peru.

Which said photograph was marked Exhibit 235.

View 932 is of the corn field east of the Peru highway and near McCormick's slough.

Which said photograph was marked Exhibit 236.

3631 View 931 is the corn field along the south bank of the Illinois River taken from the Peru highway just south of the river bridge.

Which said photograph was marked Exhibit 237.

View 930 is of the corn along the north bank of the Illinois River near the mouth of Huse's Lake.

Which said photograph was marked Exhibit 238.

View 939 is the corn field from the south bluff of the Illinois Valley in Section 20 and shows lands adjoining the lands involved in this suit, looking north towards La Salle, Illinois.

Which said photograph was marked Exhibit 239.

3632 View 928 is the corn field along the south bank of the Illinois River looking southwest from the south end of the Illinois Central Railroad bridge.

Which said photograph was marked Exhibit 240.

View 926 is the south bank of the Illinois River, showing corn field east of the south end of the Illinois Central Railroad bridge over the Illinois River.

Which said photograph was marked Exhibit 241.

View 1087 is the Illinois River looking upstream from a point on the south bank of the Illinois River about 1,000 feet below the Peru highway bridge.

Which said photograph was marked Exhibit 242.

3633 View 1086 is a view of a corn field of the north bank of the Illinois River looking east from the north end

of the La Salle highway bridge, showing the C. B. & Q. and Illinois Central Railroad bridges in the distance.

Which said photograph was marked Exhibit 243.

View 1085 is a view of the Illinois River looking north at a point just west of the south end of the C. B. & Q. and the I. C. Railroad bridges over the Illinois River.

Which said photograph was marked Exhibit 244.

View 1153 shows the corn between the C. B. & Q. Railroad and the Vermillion River on the La Salle County Carbon Coal Company's alleged lands in Section 23.

Which said photograph was marked Exhibit 245.

View 1155 is a view of the corn west of the C. B. & Q. Railroad in Section 23 on property claimed by the Carbon Coal Company.

3634 Which said photograph was marked Exhibit 246.

View 1157 is a view of the corn west of the C. B. & Q. Railroad in Section 23 on property claimed by the La Salle County Carbon Coal Company.

Which said photograph was marked Exhibit 247.

View 1158 is a view of corn field along the south bank of the Illinois River west of the Illinois Central bridge and the La Salle highway bridge over the Illinois River and Shippingsport being shown in the distance.

Which said photograph was marked Exhibit 248.

View 1159 is a view of corn south of Huse's Lake in the southeast quarter of Section 21 on the property claimed by the plaintiff.

Which said photograph was marked Exhibit 249.

3635 View No. 1160 is a view of corn west of the Illinois Central Railroad bridge and east of the C. B. & Q. bridge north of the Illinois River, view taken from the Illinois and Michigan Canal bank looking southeast.

Which said photograph was marked Exhibit 250.

View 1161 is of corn south of the Illinois and Michigan Canal towpath, between the Illinois Central and C. B. & Q. Railroads north of the Illinois River.

Which said photograph was marked Exhibit 251.

View 1162 is a view of corn on the north side of the Illinois River east of the Illinois Central bridge, view looking southeast.

Which said photograph was marked Exhibit 252.

View 1173 showing corn, potatoes and cabbage, east of the Illinois Central Railway, north of the Illinois River and west of the Little Vermillion River.

Which said photograph was marked Exhibit 253.

3636 View 1164 is a view of corn field east of the Peru highway in the northwest quarter of Section 21 involved in this suit.

Which said photograph was marked Exhibit 254.

View 1165 is of corn east of the Peru highway in the northwest quarter of Section 21 involved in this suit.

Which said photograph was marked Exhibit 255.

View 1208 is a view of the Illinois River bottoms, north of the Illinois River, northeast of the mouth of the Vermillion River.

Which said photograph was marked Exhibit 256.

View 1212 is a view of corn in Section 24 involved in this suit, along the Vermillion River.

Which said photograph was marked Exhibit 257.

3637 View 1213 is a view of corn between the Vermillion River and the C. B. & Q. Railroad in Section 23, involved in this suit.

Which said photograph was marked Exhibit 258.

View 1214 is of the property claimed by the plaintiff north of the Illinois River, taken from the Illinois Central Railroad bridge, showing La Salle in the distance.

Which said photograph was marked Exhibit 259.

View 1217 is taken from the Illinois Central Railroad bridge looking northwest, showing corn field north of the Illinois River, and La Salle and Peru in the distance.

Which said photograph was marked Exhibit 260.

View 1219 is of corn field north of Illinois River from a point at the north end of the La Salle highway bridge, showing the C. B. & Q. and I. C. Railroad bridges in the distance.

Which said photograph was marked Exhibit 261.

3638 View 1220 is of corn on the north side of the Illinois River between the La Salle highway and the C. B. & Q. Railroad bridge.

Which said photograph was marked Exhibit 262.

View 1221 is of corn field west of the La Salle highway in Section 22, looking west.

Which said photograph was marked Exhibit 263.

View 1222 is of the corn field looking southwest in Section 22.

Which said photograph was marked Exhibit 264.

View 1224 is of corn along the south side of the Illinois River just west of the Peru highway bridge.

Which said photograph was marked Exhibit 265.

3639 View 1225 is of corn in field south of the Illinois River just west of the Peru highway bridge.

Which said photograph was marked Exhibit 266.

View 1226 is of corn on Section 21 involved in this suit, east of the Peru road, south of the Illinois River.

Which said photograph was marked Exhibit 267.

View 1227 is of corn south of the Illinois River and east of the Peru highway in Section 21.

Which said photograph was marked Exhibit 268.

View 1229 is a view of the Illinois River bottoms looking north from the south bluff, Peru being shown in the distance.

Which said photograph was marked Exhibit 269.

3640 View No. 1231 is a view of the Illinois River looking north from the south bluff, showing Peru is the distance.

Which said photograph was marked Exhibit 270.

View 1320 is of corn west of the C. B. & Q. Railroad in Section 23 on lands claimed by the plaintiff.

Which said photograph was marked Exhibit 271.

View 1707 is a view of corn field on the south side of the Illinois River, west of the I. C. Railroad bridge, the La Salle highway bridge being shown in the distance.

Which said photograph was marked Exhibit 272.

View 1701 is a corn field involved in this suit on Section 21, taken near the center of the section east of Peru looking east.

Which said photograph was marked Exhibit 273.

3641 View No. 1702 shows a sample of corn growing in the field shown in Exhibit 273.

Which said photograph was marked Exhibit 274.

View 1700 is of the Illinois River bottoms, looking northeast from the south bluff, showing the Cities of Peru and La Salle in the distance.

Which said photograph was marked Exhibit 275.

View 1705 is of corn field north of the Illinois River and west of the I. C. bridge and east of the C. B. & Q. Railroad and south of the I. & M. Canal.

Which said photograph was marked Exhibit 276.

I have a view of the Illinois River bottoms looking north from the south bluff, showing the City of Peru in the distance.

Which said photograph was marked Exhibit 277.

3642 View 1704 is of the Illinois River bottoms looking northwest from the south bluff at a point just west of the C. B. & Q. Railroad, showing lands of the plaintiff and claimed by them and the Illinois Central bridge over the Illinois River in the distance.

Which said photograph was marked Exhibit 278.

Wherever the date appears on these pictures it is the date when the same were made. The list of descriptions in connection with these pictures as stated by you to me in these questions is a true and correct description of what the pictures purport to portray, and the scene

which the picture purports to portray in each of the exhibits which have been marked by the reporter is true, faithful, correct and accurate. The distances are correctly shown and appear in the pictures. None of the scenes have been magnified or distorted out of their true proportion. Each of the same is true, accurate and correct.

3644-3647 Exhibits 112 to 278, both inclusive, offered in evidence.

Objection by plaintiff; objection overruled.

Each of said exhibits received in evidence.

3648-3672 Photographs.



113 Chicago river looking south

114 Chicago river looking north



114 State street bridge - Chicago river looking west

115 Metropolitan bridge - Chicago river looking north



116 Van Buren street bridge - Chicago river looking north

117 Chicago river at Polk street looking north



118 Chicago river at 14th street

119 Drainage Canal near Willow Springs



120 Drainage Canal at Romeo



121 Drainage Canal discharging 300,000 cubic feet per minute



122 Drainage Canal: windage basin and bear trap dam



123 Main channel tail race with zero flow from Drainage Canal



124 Tail race with Drainage Canal discharging 300,000 CFM



125 Junction Main Channel and DesPlaines river, zero flow from Drainage Canal



126 Junction Main Channel and DesPlaines river, 300,000 CFM from Drainage Canal



127 DesPlaines river, up stream from Summit highway bridge



127 Des Plaines river down stream from Willow Springs highway bridge



129 Des Plaines river up stream from Willow Springs highway bridge



128 Des Plaines river down stream from Willow Springs highway bridge



130 Des Plaines river up stream from Lement highway bridge



132 Des Plaines river down stream from Lement highway bridge



133 Des Plaines river at Riverside below dam



134 Des Plaines river dam at Riverside



135 Santa Fe tracks near Lyons overflowed by Des Plaines river



139 Small industrial building at Lemont, Illinois.



140 Dammed lower highway overflowed by DesPlaines river.



141 Homes flooded by DesPlaines river.



142 Romeo highway overflowed by DesPlaines river.



140 Romeo highway bridge overflowed by DesPlaines river



141 East branch DesPlaines river at Romeo Island



142 Highway bridge over DesPlaines river at Lemont



143 West dam in DuPage river at Channahon



143 Old Kankakee river near Knox Indiana



144 New Kankakee river near Knox Indiana



145 Backwater ditch 12 miles north of Knox Indiana



146 New Kankakee river from bridge near Jackson Island Club, Indiana



148 New Kankakee river, up stream near Jackson Island Club, Indiana



149 Old Kankakee river down stream near Jackson Island Club Indiana



150 Drainage ditch about 1/2 mile from Old Kankakee river near Jackson Island Club Indiana



151 Drainage ditch about one mile from old Kankakee river



143 Old Kankakee between San Pierre and Wilders Indiana



144 New Kankakee river between San Pierre and Wilders Indiana



154 Moxler ditch near Wilders, Indiana - up stream



155 Moxler ditch near Wilders, Indiana - down stream



156 Dam in Kankakee river at Waldron, Illinois.



157 Kankakee river at Waldron, Illinois.



158 Mouth of Iroquois river - down stream



159 Mouth of Iroquois river - up stream



160 Dam in Kankakee river at Wilmington, Ill.



161 Kankakee river at Wilmington, Illinois—down stream



162 Creek at Wilmington, Illinois



163 Mouth of Kankakee river, source of Illinois river



164 Ice gorge near mouth DesPlaines river



165 Ice gorge at source of Illinois river



166 Illinois river at E.J. & F.R.R. bridge, Devine—up stream



167 AuxSable river, ten miles east of Morris, Illinois



166 Mouth of Aux Sable river



167 Aux Sable river about 2 miles above its mouth



170 Aux Sable river-up stream from stone bridge



171 Mazon river-up stream 3 miles southeast of Morris Ill



172 Mazon river-up stream 3 miles southeast of Morris.



173 Mouth of Mazon river



174 Illinois river-down stream at Morris.



175 Illinois river-up stream at K&S RR bridge



176 Mazon river - down stream near Pleasure Club house



177 Mazon river - up stream near Pleasure Club house



178 Illinois river - Marseilles dam, looking north.



179 Marseilles dam drowned out by ice gorge.



180 Illinois river at Marseilles - down stream



181 Junction Fox and Honey rivers Burlington Wisconsin.



182 Fox river at Burlington Wisconsin.



183 Fox river at Elain Illinois



184 Fox river at Elgin



185 Fox river at Elgin.



186 Fox river at Aurora - west dam



187 Fox river at Aurora.



188 Fox river at Dayton - up stream.



189 Fox river at Dayton - up stream.



190 Fox river at Dayton - up stream at rapids



191 Fox river at Dayton - up stream at rapids



192 Fox river at Dayton - down stream



193 Fox river at Dayton - up stream



194 Fox river at Ottawa - up stream



195 Mouth of Fox river at Ottawa.



196 Illinois river at Ottawa - up stream



197 Vermillion river at Streater - down stream.



198 Vermillion river at Streater - up stream



199 Vermillion river at Streater - down stream



200 Vermillion river at Streater - down stream



201 Vermillion river 2 miles above Streater



202 Bailey Falls - 4 miles above mouth Vermillion river



203 Vermillion river; rapids near Bailey Falls.



204 Illinois river - down stream below LaSalle highway bridge.



205 Illinois river, from mouth of I.&M. Canal.



206 North toward Peru from Boers residence in section 28.



207 East from south end Peru highway bridge.



200 West from ...

201 North from ... between IC & CB&Q Rys.



202 South from ...

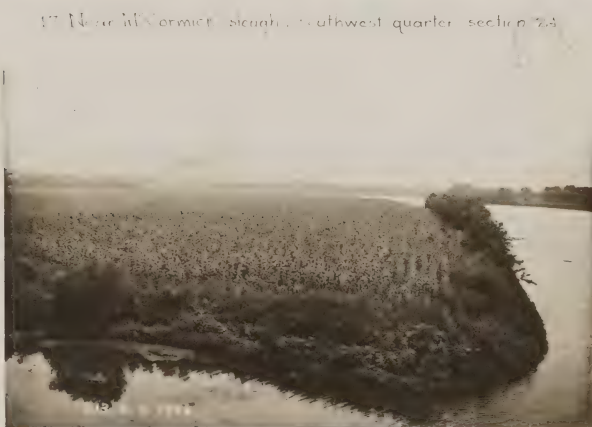
203 South of ... and north of ...



212 Northwest from ... LaSalle in the distance.



213 North from south side of Illinois river -- CB&Q and IC RR bridges.



220 Section 22 - east from I & M Canal

221 Section 21 south of I & M Canal



222 Southwest from south end ICRR bridge



223 Looking south from ICRR bridge



224 Northwest from ICRR bridge.



225 Southeast from north end river span ICRR bridge



226 East along south bank from ICRR bridge.



227 Looking north toward Peru from south bluff.



531 Northwest from LaSalle highway bridge



535 Northwest from LaSalle highway bridge



230 Northwest from I.C. RR bridge



231 Northeast from LaSalle highway bridge



232 Section 22 west from LaSalle highway



233 Sections 21 and 22 from I & M Canal embankment

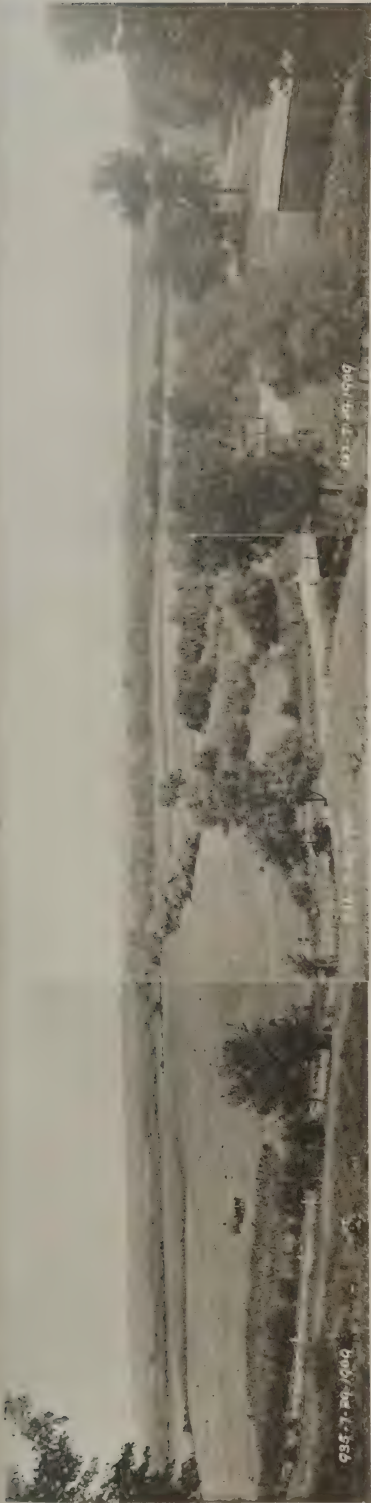


234 Northeastly from north end LaSalle highway bridge

10

10. 10. 10.





235 Illinois valley bottoms from south bluff toward Peru



236 East Peru highway near M'Cormick slough



237 West from near south end Peru highway bridge



238 Right bank Illinois river south of Huse Lake



239 North section of Peru



240 Looking down river south of ...



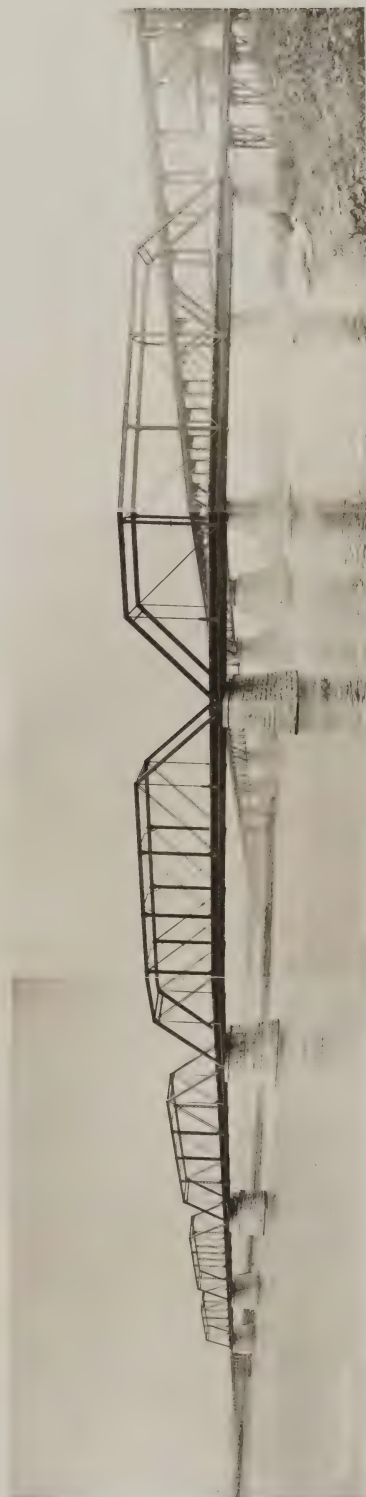
241 South bank of Illinois river east of ...



242 Illinois river - up stream at Peru



243 Easterly from north end LaSalle highway bridge



244 C.B. & Q. and I.C.R.R. bridges from south bank of Illinois river - looking up stream



245 Section 23 between CB&Q RR and Vermillion river



246 Section 23 west of CB&Q RR



247 Corn in Section 23 west of CB&Q RR



248 South bank Illinois river west of ICRK



249 Northeast quarter section 21 south of Huse Lake



250 North bottoms between IC and CB&Q RR



250 Corn south of LaMoine Canal between C&DQ and ICRR.



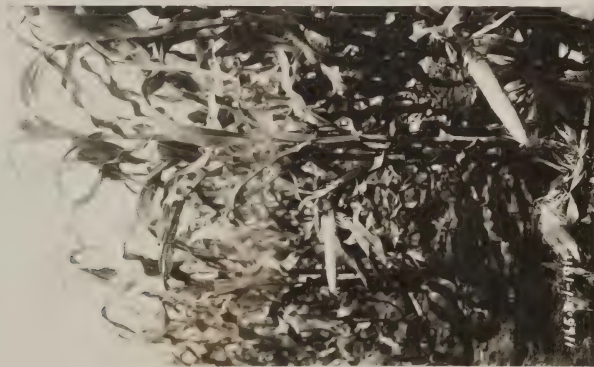
252 Corn in south on north side Illinois river east of ICRR.



253 Corn near Illinois river east of ICRR.



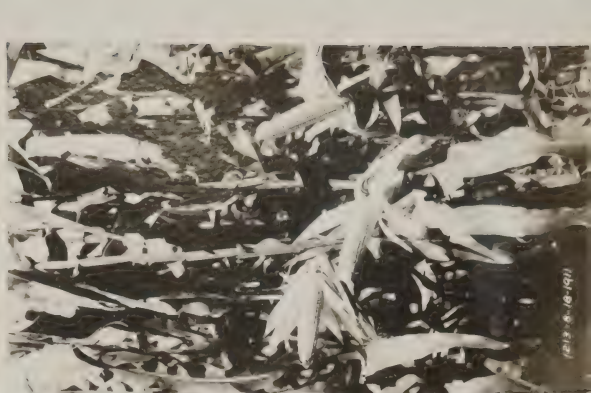
254 Northwest quarter section 21 east of Peru highway.



255 Corn east of Peru highway in northwest quarter section 21.



256 Illinois valley opposite mouth of Vermillion river.



217 Looking north westerly toward LaSalle from I.C.R.R. bridge



218 Westerly from I.C.R.R. bridge



219 View from north end LaSalle highway bridge



220 Corn north side of river east of LaSalle highway



263 Corn south side Illinois river west of Peru highway



264 Looking south from section 22.



265 South bank of Illinois river west from Peru highway



266 Corn south side Illinois river west of Peru highway.



267 South side of Illinois river in section 21 east of Peru road.



268 Corn in section 21 east of Peru road.



269 Illinois valley from south bluff toward Peru





270 Illinois valley from south bluff northeast toward Peru.



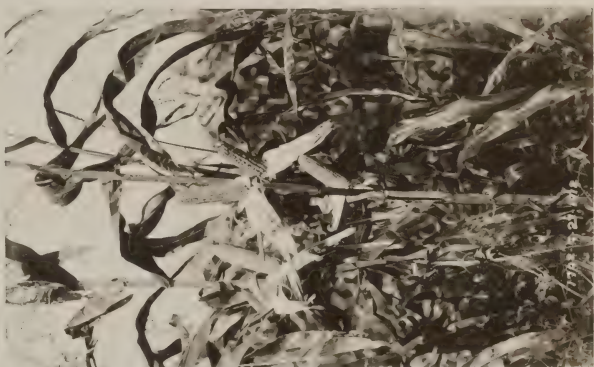
271 Corn in section 22 west of C B & Q R.R.



272 South side of Illinois river west of I.C.R.R.



273 East from center of section 21 east of Peru road.



274 Corn near center of section 21.



275 Illinois valley from south bluff northeast toward Peru.



276 Illinois valley from south bluff



277 Illinois valley north from south bluff toward Peru



278 Illinois valley northwest toward LaSalle and Peru from south bluff

3673 December 3, 1912, 9 A. M.

W. J. POWERS, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is W. J. Powers. I am a civil engineer employed by the Sanitary District. I know the premises involved in this suit. I was upon those premises yesterday and saw and observed them. I observed them yesterday with reference to overflow. I observed the condition of the land there, such as crops and so forth, going through, and in the sloughs and water courses. I observed the stage in the Illinois River with reference to the land there, and the land with reference to the Illinois River. There was no water on the land yesterday, not any that I could see, outside of the slough.

I was in company with Professor Fraser and Hegnauer at the time.

Cross-Examination by Mr. O'Connor.

3676 I have been on the land several times before yesterday, two or three times during the last week. The first time was in 1906 or 1907. I have been there at different times since 1906 up to the present time. I have been connected with the Sanitary District for twelve years.

3678 Yesterday the land that we first visited was in Section 21. I know where Section 21 is from the government maps and the Sanitary District maps; also the section corner, the southwest corner stone at Section 21. I practically covered the whole tract of 21 yesterday. I did not make any estimate as to the number of acres. I had no occasion to compute the number of acres. I should judge there are from 367 to 370 acres. They were lo-

cated in the fractional northeast quarter, northwest quarter, southeast quarter and southwest quarter of Section 21. The acreage lay south and west of the Illinois River and east of the slough known as McCormick slough.

3680 I was also over in Sections 22 and 23. I was not on the little portion over there in the southwest corner of Section 21 that lies east of the Illinois River yesterday. We got on Section 21 by going down to Peru and following the road over the bridge and over east and west of the center line through Section 21. The road goes
3682 through the entire section. Portions of it are elevated through the slough known as McCormick slough and portions of it is level. In addition to McCormick slough there is sort of a swale there. I should think the road is maybe a foot or so above the swale.

I saw the corn stalks but did not make any computation as to the number of acres. The corn stalks were
3683 irregular, not in a regular shape.

3684 I went down there under Mr. Chipperfield's instructions to take these gentlemen down to show them this land. I did not make any tests to determine where the water
3686 stood under the land, only observed the surface of it. I
3687 was about where you have your finger when I made the observation. I did not select any particular point
3688 for the purpose of making the observation. There would be very little difference between the level of the water in the Illinois River and in McCormick slough.

3689 I observed the bank of the Illinois River. It is not of
3690 a uniform height. The bank along the river here on the north is possibly four feet higher than it is on the east part of Section 21.

3691 I have made a contour map of that particular piece.
3692 I did not see any water on the land. Did not make any
3693 examination of the land for the purpose of ascertaining

3694 where the water table was; there probably is one. The
 3695 water table is a little higher at the slough. I was out
 3696-3711 on the land. The condition of the slough there
 was about as it was in Section 21.

3712 I was over on 23. My judgment is that the land is three
 or four feet right in there above the level of the water
 3713 in the river. Where you are pointing is one of the low
 points in there. I never made any survey in through
 there.

After we went on the land we went east of the Illinois
 Central right of way. I was over to the bank of the Ver-
 million River. The level of the water in the Vermillion
 River was from nine to ten feet below the surface of the
 3715 soil. There was water in the slough along the east side
 of the Illinois Central. The water backs in from the
 3716 river, I suppose. I have been all over the land. I did
 3717 not go down to that particular spot yesterday. I saw
 it there yesterday and at different times before yester-
 day.

Re-direct Examination by Mr. Chipperfield.

If I responded in answer to an inquiry of counsel that
 the water level in Section 23 stood with reference to the
 Illinois River four or five feet above the river, I mis-
 understood the question. I don't know anything about
 the water level in this land. I don't mean to say that
 it stood four or five feet above the water in the river.

3718 I took samples of the soil from forty acres of this
 land. I have those samples and will bring them to court
 and produce them for the inspection of the jury.

3719 J. G. MOSIER, a witness for the defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is J. G. Mosier. I live at Urbana, Illinois. I am a teacher in the College of Agriculture and soil investigator in the agricultural experiment station of the University of Illinois. My chair of instruction in the University of Illinois is soil physics and also in the investigation in the experiment station, all along the same line. I have had direct charge of the detail soil survey as made by the state. I have made a soil survey of La Salle County and have a map of the survey and have produced it for identification.

Which said map was marked Exhibit 280.

That map truly, accurately and correctly represents the different types of soil found in La Salle County. That is the entire map of four sheets.

Four sheets were thereupon all marked for identification as Exhibit 280.

I have been on the land opposite Peru and La Salle within the last few hours. The type of soil found in the sections mentioned is brown silt loam, bottom land. That is the part included between the bluffs. A brown silt loam is a soil that is made up largely of particles of intermediate sizes. We have soils made up of four different constituents in regard to size of the particles. The finest is clay, the next size is what we call silt and the next is sand, and then the fourth gravel. Silt loam is made up largely of the constituent soil. Then in addition to those there is a varying amount of organic matter mixed in with this constituent. Understand me now, it is not made up entirely, but largely, of this constit-

uent. In addition to that we may have either the clay or we may have some clay and some sand with it.

The land I saw yesterday I would denominate first bottom land. By first bottom land I mean land that over-
3722 flows, is subject to overflow. The soil is what we call a porous soil, a soil that will drain very well.

This soil would be a fairly early soil and yet not as quick as would be the case with a larger amount of sand in it.

In the agricultural department we have made a study of the raising of crops. I have had a practical farming experience in addition. I was raised on a farm and have a farm that I have managed for the last fourteen years.
3723 As to the crops which could be grown on this land from the 20th of June to the 1st day of November I would say corn, probably one of the principal crops that would be grown on there; soy beans is another crop requiring a slightly shorter season, possibly, than corn; millet and sorghum would be another crop that could be grown there. By sorghum I mean cane.

Millet is planted in the spring, say from the middle to the last of June. Millet that was grown here possibly would not need to mature, but if it was simply sown for hay it would not need to mature before it was cut. I don't think I could exactly state the time it would take, but I am positive that it would have time to mature from
3724 the first of July until September, until the frost came.

For hay it is cut before the seed begins to harden, when it is hardly in the milk yet.

Cane is used in connection with farming; not for sorghum or sugar; it is a forage crop. By forage crop I mean a crop that you use in the same way as hay. An ordinary yield of millet is two and a half to three tons on good strong land.

When I speak of corn that could be raised on this land I mean rather an early maturing variety. There are such varieties maturing from ninety to one hundred days.

3725 I have never had much experience in the use of ensilage or silos. I could not say anything as to the root crops which could be raised on this land.

Soy beans can be planted about the same time that the corn is planted. We usually plant it just after corn planting time. To mature it would take from 90 to 100 or 110 days.

Soy beans are used for hay, and the seed crop is obtained from them. The ordinary yield from an acre of soy beans is fifteen to twenty bushels per acre, and in addition to that there would be about from a ton and a half
3726 to two and a half tons per acre for hay.

Q. I will ask you to state, professor, if you have an opinion as to the present value of land situated as you saw the land in controversy situated yesterday, for the purpose of raising the crops which you have mentioned?

A. Under the conditions that the land is in?

Q. Yes, sir.

Mr. O'CONOR: We object, your Honor, unless some time is fixed.

Mr. CHIPERFIELD: I am fixing the present time.

Mr. O'CONOR: We object to it.

The COURT: I will let him answer.

Mr. CHIPERFIELD: The first question, professor, is, have you an opinion on that subject?

A. I have merely an opinion.

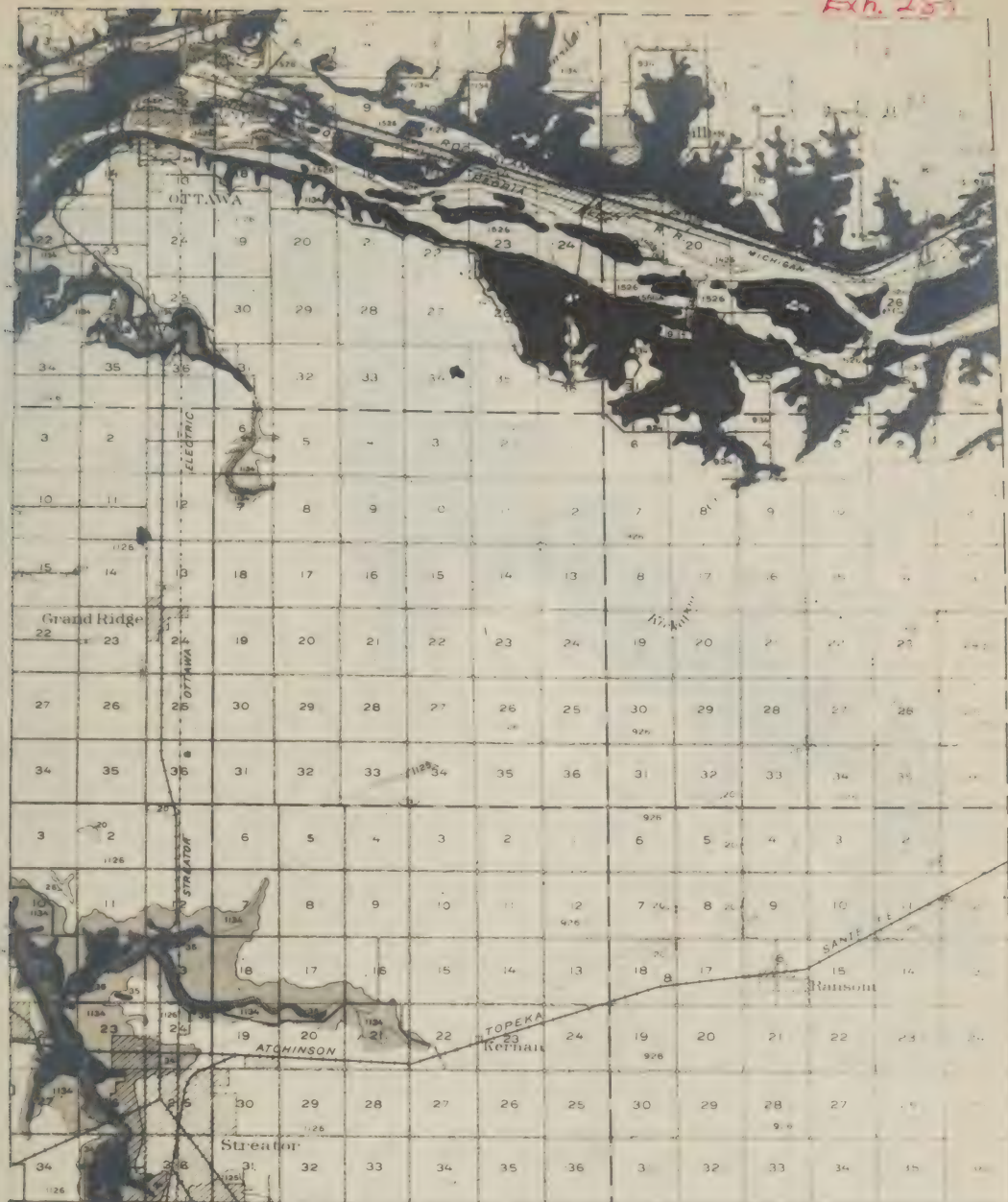
Q. That is what I am inquiring, if you have an opinion as to the value of the lands so situated, for the purpose of raising the crops you have spoken of. That can be answer yes or no first. A. Yes.

Q. What is that opinion? A. Taking the land as it
3727 now, subject to overflow as this is, I should say from
\$125 to \$150 an acre.

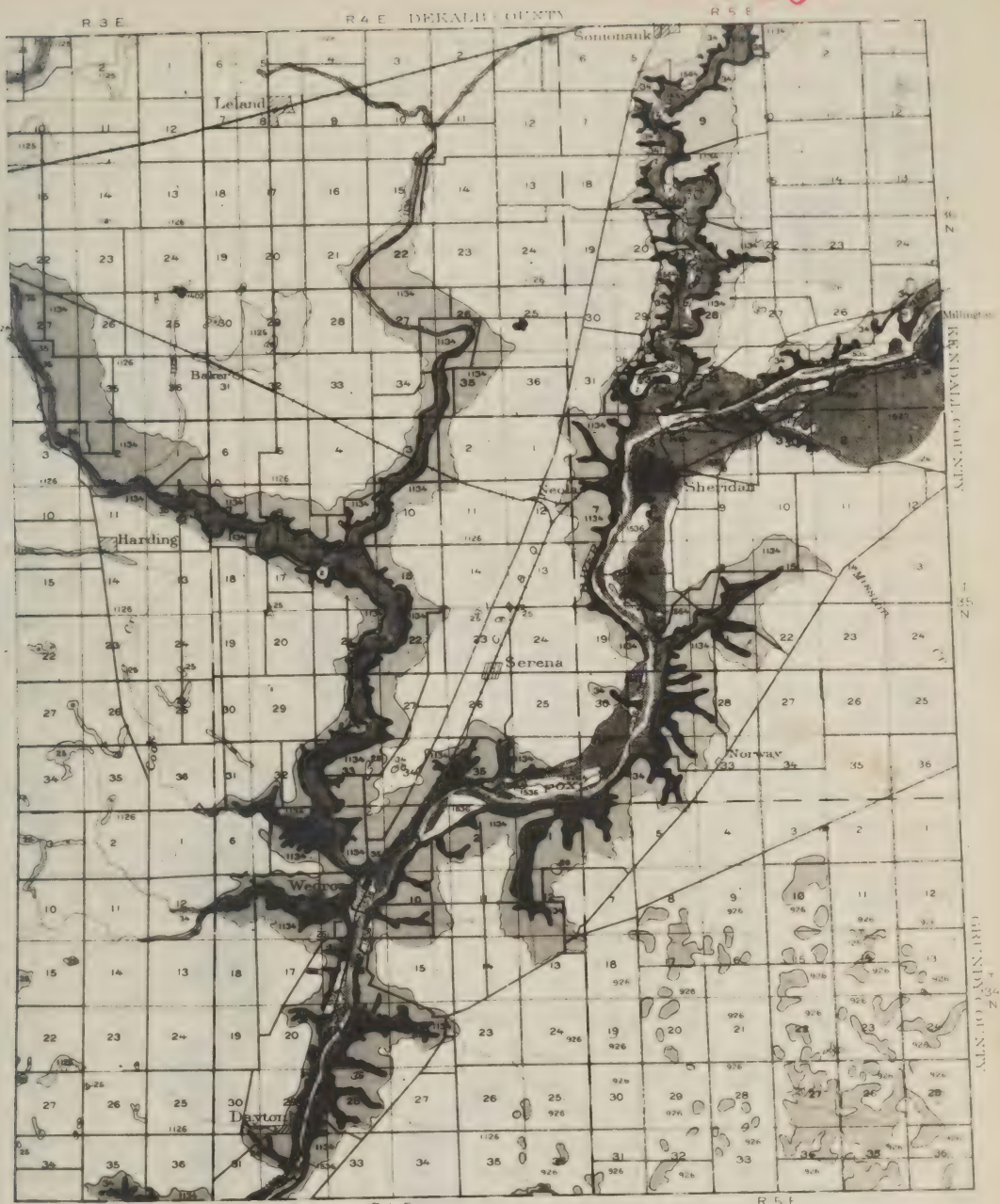
Mr. CHIPERFIELD: In connection with Professor Mosier's testimony I want to introduce in evidence the Exhibit 280, being the soil survey map.

Which exhibit was thereupon admitted in evidence, and is in words and figures following, to-wit:

3728-30 Soil survey map.



SOIL SURVEY MAP OF LASALLE COUNTY
UNIVERSITY OF ILLINOIS AGRICULTURAL EXPERIMENT STATION



LEGEND

UPLAND PRAIRIE SOILS	TERRACE SOILS	
Brown silt loam	Brown silt loam	Yellow-gray sandy loam
Brown silt loam on till	Brown silt loam on gravel	Dune sand
Black clay loam	Brown silt loam on rock	Gravelly loam
Black silt loam	Brown silt loam over gravel	SWAMP AND BOTTOM LAND SOILS
Brown sandy loam	Yellow-gray silt loam on gravel	Deep brown silt loam
UPLAND TIMBER SOILS	Yellow-gray silt loam over gravel	Mixed loam (small streams)
Yellow-gray silt loam	Brown sandy loam	Deep peat
Yellow silt loam	Brown sandy loam on gravel	Medium peat loam clay
Rock outcrop	Brown sandy loam on rock	RESIDUAL SOILS
	Brown sandy loam over gravel	Brown sandy loam on rock
		Residual sand

Scale: 0 to 2 Miles

Mora and Ridge Types

SOIL SURVEY MAP OF LASALLE COUNTY
UNIVERSITY OF ILLINOIS AGRICULTURAL EXPERIMENT STATION

3731

Cross-Examination by Mr. O'Connor.

I did not make the map. The light green color designates the brown silt loam on the bottom land. That takes in practically all the valley that lies between the bluffs that is overflowed. The map was made by the party
 3732 out in the field doing the work during the soil survey, working here in this county. There were four men in the party. In giving the valuations which I have today, I have not taken into consideration the value of the coal lying under the surface. I confined my testimony purely to the surface of the land. My testimony took in all of
 3733 Section 21. I don't know how many acres. I cannot give the acreage, but from the map I have an idea of how much in the section is involved.

I have been through Section 23 south of La Salle; through there two years ago. From what I have seen of the map I have an idea where the land of the plaintiff is located over there. I was never there for the purpose of making an examination of the land. That is the land
 3734 in Sections 22 and 23. I do not know how much of the land overflows or how long the water stays on it or how much has been raised on it during the last ten years, except I might say that as this is mapped bottom land on our soil survey as brown silt loam, I know that the land overflows, but just how much it overflows in a certain stage of the river, I don't know. It overflows at a certain time of the year and has been doing that for centuries.

3735 It would not be possible for me to tell the land overflowed simply by an examination of the soil. I would first have to know where it came from. I don't think any man could determine that it came from the bottoms.
 3736 There is nothing in bottom lands that you do not find in uplands.

The bottom land is rich in the qualities of productivity. By the use of the term "under conditions existing" I mean subject to overflow, I mean danger of overflow at any time, the occasional overflow that occurs. If the land was not subject to overflow it would probable be worth double.

3737 I cannot answer as to how many acres in Section 21 could be used for the purposes I say. It is pretty hard to answer the question definitely, but in a general way, just from my observation yesterday afternoon, I should say nearly all of that could be used in this way. The condition of the land where the weeds were growing was it was simply full of weeds. The condition of the soil was just as good as it was any other place.

I don't know how long the water stays up on the land in the spring or summer. That would influence my answer if the water did not get off there in time to put a crop in; it certainly would; but judging from the topography of the land I passed over, there didn't seem to be very much difference in the height of the land that was cropped and that that was not. It seemed to be about level. The corn was pretty generally in one large area there. Of course, there were one or two places where there was no corn. The corn looked practically uniform to me.

I saw the stalks there. Made no examination of the corn itself. I did not examine any of Section 21 east of the Illinois River; I was not there. I don't know whether that is practically the same as this part of Section 21 lying south and west of the river, except from the soil survey. All my knowledge as to the land in Sections 22, 23 and 24 is based on the survey. In my estimate of the values I had reference to the bottom land that is mapped, brown silt loam on the soil survey.

I have had practical experience in the raising of the

different things I have mentioned. I testified in a case like this before. I don't remember the year. It was in
 3740 Fulton County four or five years ago, I don't remember exactly. I don't know how much land was involved in that case.

Another case I was in was at Peoria some three or four years ago. In that case there were 1,800 or 2,000 acres, I couldn't say positively.

3741 It is not my idea that all the land should be planted in soy beans or millet. It would all depend on the kind of a farm I was running. If I was running a dairy farm or raising hogs then the amount of soy beans I would put in would be different from what it would be if I was running a grain farm.

3742 I am sure soy beans will grow on that land. Of course if it flooded they would not grow. If I planted soy beans
 3743 I would use part of it for hay as a forage crop, otherwise I would sell them or feed them to the cattle or
 3744 hogs, or thresh them for seed and then sell the seed to anybody that wanted to buy them. There is getting to be quite a demand for soy bean seed, and I should dispose of those just as I could best. In the last four or five years there has been an increasing demand for soy bean seeds in the state.

3745 If I was raising millet I would put in enough to supply me with hay and possibly some for sale. It would depend upon the amount of stock I had. The balance I would put in some other crop, corn for one thing. How much I would put in corn is the old question again. If
 3746 I had 200 head of cattle then I would want considerable of it to soy beans and millet and the balance in corn, and if I didn't have any cattle then I would put it largely in corn or some crop of that kind.

3747 I don't know from the analyses we have made about the quality of the land for raising corn. I have no defi-

3748 nite knowledge as to the quantity of corn it would raise, or as to what it has actually produced, or as to the conditions that existed in this specific locality for the last ten or fifteen years.

3749 *Re-direct Examination by Mr. Chipperfield.*

I do not want the jury to understand that I would plant all the land to any one of these crops in any one year. If I were conducting a farm here I would divide the farm proportionate to the different crops that would best serve my purpose for that kind of crop. Soy beans
3750 are actively upon the market and bring from \$1.50 to \$2.50 a bushel.

3751 LEONARD HEGNAUER, a witness for defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Leonard Hegnauer. I reside at Urbana, Illinois. I am professor of crop production in the University of Illinois.

3752 The work I do is two-fold. In the first place I am responsible for the instruction in the university that is given on crops, and in the second place, I have charge of all the experimental work that is done in crop production. Now that means about this, in crop production we investigate different crops that are grown in this state, the soils to which they are adapted and the climatic conditions under which they grow. So in short we take that work today, that is, we look after the crop interests of the state. I have been connected with the
3753 University of Illinois since 1903, excepting June, 1910, when I went with the State College in Eastern Washington. I was there until September 1, 1911, when I was

asked to come back and occupy the position which I now have.

In connection with the university we have an experimental farm at Urbana which is a very large farm, and then we have a field at DeKalb, Illinois, and one at Fairfield, Illinois. I have charge of those. I have men helping me, of course. We issue bulletins concerning our observations and experiments from time to time.

I have seen the land in controversy in this case, and was on the land yesterday. I believe that there could
 3754 be raised on this land between the 20th of June and the time of killing frost, Indian corn. I believe Indian corn could be cultivated successfully. I would take the variety that would mature first and sow it and use it as
 3755 mature corn. Then we could use the corn for silos as ensilage. We could cut the corn and put it into shock and use it as fodder. Dry corn.

Another crop that would grow on that land is sweet corn. Of course, sweet corn can be used for canning purposes and could be used for feed. Sweet corn could also be used in silos as ensilage.

Then we could grow on that land millet. Millet would be used entirely as hay for feed, or we might produce the seed and sell the seed off of it.

Then we could grow soy beans, which is a good crop to grow in any kind of land where the crop will grow for the purpose of soil improvement and for the purpose of feed. The soy bean crop can be harvested as hay and fed as hay, or we can wait until the seed matures and thresh the seed and sell the seed and feed the hay.

Another crop that could be grown there is the cow pea crop. Cow peas can be used for fertilizer purposes and for hay purposes. If we had a very early variety of cow peas we might make seed there, but we could use it as feed.

3756 Another crop that would grow on there would be the potato crop. The potato crop is handled simply for the tubers.

Another crop is the sorghum crop simply for feeding purposes. That is what most people would call cane; we generally speak of it as sorghum to distinguish between that and the real sugar cane which is grown in the south. The sorghum crop could be used in two ways; cut it down and dry it and cure it up like you would any other hay and use it as hay, or we might use it as a soiling crop. By soiling crop I mean we let the crop grow up and cut it down, say this morning for today's feeding, feed it green. It is used in place of pasture crops. Cutting each day what is required for that day's feeding and then the next day cutting another portion and feeding it, and so on. And in the case of sorghum we can cut the piece over, beginning at one end and cut it over and then start at the beginning again and cut it once more. That is the way that is generally handled.

3757 Now, another crop we could produce is the rape crop. It is a crop that is similar to the cabbage, produces no head whatever, but it produces leaves similar to the cabbage and is used as a green food crop. They sometimes feed it to sheep, and very frequently it is pastured with calves and young stock of some sort.

Then there are two other crops that I am not so positive about, but I believe, have every reason to believe, would grow. The reason I don't know that they would is that I haven't seen them in this section growing. They are the kafir corn and milo maize.

The Indian corn I have in mind is what the farmer ordinarily calls corn. It is the dented variety and I would limit to the ninety day corn.

3758 In regard to the use of corn for ensilage, the usage varies a little bit. All people do not exactly agree on the

stage of maturity as to when it should be cut. Most of them want it in the glazed condition, that is, it is past the roasting ear stage and is beginning to get hard. The leaves are still green, the husks are probably turning slightly brown. Now that is one stage in which they cut it. Another stage is just a little bit farther on, when the ears have become quite brown and the lower leaves are beginning to dry, but it is not ripe; we don't let it get ripe for that purpose. Now between those we find them cutting it and using it.

3759 The ensilage is stored in what we call silos, kind of air tight structure. Just cut up and put in there tight so the air cannot get at it and cause decay.

I would judge an average yield of soy beans under the conditions such as these, I would say would be from fifteen to twenty bushels of seed to the acre. The ordinary market price for soy beans would be from \$1.50 to \$2 per bushel.

The average yield of millet I should say would be from three to five tons an acre. And the average yield if milo maize and kafir corn would be four or five tons.

3761 The average yield of cow peas would be about three and a half to four tons. Soy beans I would put a little lower than cow peas, say about two tons.

It is my judgment that all the crops which I have mentioned would mature between the 20th of June and the 1st of November.

3762 *Cross-Examination by Mr. Butters.*

I have farmed myself. I was on the farm until I was twenty-three years of age. I am now forty.

The very earliest varieties of Indian corn would mature just about like the soy beans. We plant the Indian corn first and just as soon as we get through with that we plant the beans.

3763 We have ninety day corn, and our earliest soy beans would take just about ninety days. I say for the earliest varieties about ninety days. I should not make a great deal of difference as to which is adapted to damp soil, corn or soy beans.

3764 I don't know how many acres there are in Section 21. I should think in the neighborhood of 400. I don't know how many silos it would take for ensilage on that amount of ground, or how many tons a silo holds. I will say we 3765 have a silo that will hold 250 tons, and the ensilage runs about ten to twelve tons to the acre. I cannot give you the dimensions of the silo holding 250 tons; might 3766 be about thirty feet high.

If the corn was not in the glazed condition it would make ensilage all right, I think, but not quite as good. I don't know it would be unsafe to put it in a silo if it had 3767 not reached that stage of maturity. I don't know that it is futile to put it in at that time.

3768 My answers are not all based on the fact in this case that the land can be tilled from and after the 20th of June continuously to the first day of November. I simply based my answers on this ground, that I have included crops there which would not necessarily require all of the time that is involved between those two points. For example, we have there at least 110 days, and these crops would mature some of them in ninety days, so that we would have there a leeway of twenty days. If you get on the land the first of July it would make good ensilage corn and would be in the glazed condition before 3769 November. If it would not mature the corn so it would arrive at the glazed period it would not be good for soy beans except as a green food, but I would not attempt to say that we could mature the seed.

You cannot feed a crop unless you have got animals to feed it to. I do not know what the ordinary trade

silo costs. I never constructed one myself. I am not
 3770 sure as to whether a cement costs about \$1,000.

I would not say that I have named all the crops to
 Mr. Chipperfield that could be raised upon this land with
 any degree of profit. I presume garden truck would
 3771 grow, but I would not answer because I do not know; I
 never had any experience in that line.

When I was on the land yesterday I noticed the part
 that had been in corn and the part that was not in corn.
 I did not distinguish any difference between them as to
 the character or fertility of the soil.

3772 I was not over on that part of the land you are show-
 ing me. I saw some corn that was immature. I did not
 see any difference in the soil there. The question would
 3773 be whether the water stays off long enough. Of course
 if the water comes in while the crop is out there it won't
 3774 grow. I would not care to estimate how much land I
 saw that did not have a crop on it in Section 21. If you
 could not plant until the first day of July it would not
 3775 have as great a value for corn, but it would have a
 value. If in addition to that the condition of the surface
 became so wet that it was impossible to get upon it to
 3776 harvest the corn, it would have a value as ensilage or
 fodder.

We have grown cow peas in southern Illinois and on
 our farm at Urbana and in some portions in the western
 part of the state. I have not done any experimenting in
 this vicinity practically within a radius of fifty miles.
 3777 I do not know that this climate is not conducive to the
 profitable production of cow peas. I know what the soil
 is. I don't pretend to say anything about the analysis.

3778 In order to raise cow peas it requires a soil having or-
 ganic matter in it and soils that have mineral substances
 in them. This soil I suppose is classified as brown silt
 loam.

3779 I don't know from actual experience what the interval is between the spring and fall overflows on this land.

If you could get on the land in May it was fit to till during the entire summer and turn stock in upon it in the winter, it would produce all the crops that I have testified to and its value, I think, would be considerably more.

3780 GEORGE DeGROOT, a witness for defendant, being sworn, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is George DeGroot. I live at Peru. I have a fish market and have known the Illinois River about twenty-five years. Twenty-five years ago the river was cleaner than it has been a year or two before the drainage came in. For a year or two before that time it was
3781 pretty bad. There was lots of moss, dead water, had no chance to get out; not so very much of a current; would take a long time for the water to flow away. I could not tell how fast the current was at that time.

After the Sanitary District was opened there was a change in the current. I don't know exactly what the current is now because the current is changeable. I would say about three miles an hour.

3782 I know the land in this suit across from Peru, the land of the plaintiff. I know McCormick slough. I know

3783 the creek known as Cedar Creek. Cedar Creek comes out of the country down from the hills. It runs a long ways back from this land, thirty or forty miles. When Cedar Creek is in flow I have seen it all the way from four to six feet of water coming down. It empties down between what they call the Huse and Loomis and McCormick slough a half mile below the bridge. If there is a
3784 real heavy rain it flows into the McCormick slough.

This creek has formed a great big bar. That bar runs

clear across the slough; that used to be all one slough. The bar runs across where the creek comes in. The water from Cedar Creek empties into the slough. There are a lot of willow trees growing on this bar and they throw the water in every direction. There is a big embankment that makes the bottom land higher than it really is. I should judge McCormick slough, figuring in the narrow ends of it, is about a mile long. It is twenty-five feet deep in places in high water. When the slough is filled with high water the land on the east side of the 3785-86 slough is the highest. Some places it is ten feet higher. The effect which the slough has upon the seeping out into the land is different. It cuts and runs through here and this slough runs back upon it, little low places. There is a little small creek that runs through and backs up on this ground. In fact, there is a pond, and this water is shut off by this big bar down below which holds 3787 this water two or three feet higher than this other slough that is connected with the river. This water cannot get out any way at all. It is all grown up with willows and banked up there, and it all stands there about a foot higher than the main channel is. There have been piles of driftwood and refuse drifted in there to build up the bar. The water in this slough has no other means of escape except seeping through the land. That is the only way it could get out and it seems to me it don't even seep out. It stays right there.

When the draws which I spoke of become filled with water it backs up on this. The bar is on Ernat's land. In order to get ride of the flow a man named McCaleb, who had some land connected to McCormick's slough on the south side, went down there and cut a great big strip of willows, about a half a block wide and a block and a half long, and then Ernat stopped him. The company hasn't done anything towards draining this slough, but

the renters have. They went down there and tried to dig through with spades, through that driftwood, and gave it up as a bad job.

When the river goes down in the spring the bar holds the water up in the slough. The slough is about a mile long and it is several blocks wide in places. Of course, it runs uneven; some places it isn't over fifty feet up in the end. The level of this slough is two feet higher than it is when the river is low. There is no connection whatever between the river and the slough.

3789

Cross-Examination by Mr. O'Connor.

I last saw McCormick slough yesterday. Also saw the Illinois River yesterday. A man by the name of Powers was not with me. I am not acquainted with Mr. Powers
 3790-92 of the Sanitary District. I did not make any observations yesterday; just looked at it the same as I would every day; that is my business on the river. The
 3793 water yesterday was moving in the slough. The wind was ruffling the water. The water in the slough was standing. It was about three inches above the level of the water in the Illinois River, three to five inches. Of course it has been falling right along. I know because I pulled through the place that holds the water in the slough. I told you it was from three to five inches lower. Know it was four or five inches lower by riding this slough connected with the upper slough and by pulling
 3795 through. I did not make any measurements, that is just from my judgment. The river does not affect it by seepage back over the land; McCormick slough does. It
 3796 only does to the low ground. I would judge 70 to 75 per cent. of the ground is low and the balance of the low ground would be affected by McCormick slough. None of the low ground is affected by the river at all. It cannot get out because there is a big high bank all the way

around the bend, I would judge about ten feet high. Not just all the way but clear up to the land.

3797 There isn't any water from the Illinois River comes in on this land, none at all. I have never thought that there was any seepage held back in the land, or water held back in the land from the Illinois River on account of the clay ground. There is a sub-soil there. There is a big high bank there right across from the mouth of the river. I don't know whether there is a clay sub-soil underlaying this ground. The clay I spoke of is up on the bank, and down.

I have been in a position to observe the river for twenty years or longer. I am pretty intimate with it.

3798 I never done any work for the Sanitary District of Chicago. I don't know that my father has. I don't pay any attention to my father's business. I don't know whether he is doing any work for the Sanitary District or not, except he has been keeping tab on a little water, but that hasn't got anything to do with me. Father has
3799 been taking gauges the same as anybody else does that has got any interest. In fact I do, the first thing in the morning I run over to see whether the water has raised or lowered. I don't know what connection my father has with the Sanitary District.

I remember when the Sanitary District opened, but not exactly. It was quite a few years ago. We did not
3800 pay any attention to it, just figured it was running on and off. I knew it was being run into the river, as I read the papers and looked things over. We kind of figured when they were turning it in. I didn't think it came from there at that time. At times I don't think any of it
3801 comes from there. I have figured it, in my opinion, because the water was down so low we did not think there was any coming in at all. Saw it in the Chicago papers about its being turned in. I saw a difference in the

color of the water; it used to be roily and dirty. The
 3802 water was soggy and heavy and muddy, and it seems
 when the drainage was turned in we had nice clear water.
 I didn't pay any attention to it. I suppose it took sev-
 eral days to get where we lived. I haven't kept any
 track as to the year when I did notice it. When I no-
 3803 ticed it it was at Peru. I don't know how much water
 there was at Peru at that time. It is a good many years
 back and I never knew I would be a witness in this case,
 because if I ever dreamed anything like that I would
 be here to hand it to you good and plenty. We have to
 take human life as we find it, you know, and I am just
 giving you my best judgment, and that is the best you
 can expect.

3804 When I first noticed the water it was eight feet in
 some places and some places forty feet, and we have
 places that fifteen years ago it was twelve feet of water
 and now it is dry land. I couldn't tell how deep the water
 was when I first noticed the water from Lake Michigan.
 3805 I think I saw a change in the color of the water since,
 the last time this morning. I think it was lake water
 the same as it looked up at Chicago. I was up in Chi-
 cago a week ago and it looked the same, and that is what
 you go by. I was standing on the middle of the Illinois
 River bridge at Ottawa. The river is 1,000 feet wide and
 the current is an ordinary current. I guess we had a
 3806 four mile current. I couldn't tell how deep the water
 was.

It was not a general condition. The Fox River has
 got a different color passing through. I could not tell
 from the Illinois River that the whole surface was af-
 fected by the water from Lake Michigan. I don't know
 anything about the water of the Kankakee and Des-
 plaines Rivers.

3807 Prior to the turning in of the Sanitary District water,

the stream at Peru had ordinarily no current at low
 3808 water. It was dead water, that is what we call it, and
 there was a growth in the river along there. Since the
 Sanitary District water is turned in the speed of the
 water at Peru is about three miles an hour at low water.
 That is my best judgment. I cannot see that it is Lake
 Michigan water by looking into it. It is pretty fair.

3809 I don't remember how deep the stream at Peru was
 before 1900. No judgment on it. I was there a great
 deal but I paid no attention to it. I haven't any opinion
 about that. I would run down and look at the gauge
 and paid no attention to it after that only how the water
 was the day before, and how it was different. I would
 judge the water is nearly a foot higher in real low water.

3810 There is about thirty-five or forty feet of water at Peru.
 The river at that time was about 110 feet wide. The
 banks are about the same as they always are. The river
 was not filled across. I have observed the condition in

3811 Peru for twenty years, probably back farther. I know
 them pretty well.

3812 W. J. FRAZIER, called as a witness by the defendant, tes-
 tified as follows:

Direct Examination by Mr. Chipperfield.

My name is W. J. Frazier. I live at Champaign, Illi-
 nois. I am professor of dairy husbandry in the Uni-
 versity of Illinois; have been since 1893. I was born
 and raised on a farm. Worked on a farm until I was
 3813 twenty-three and owned a farm for eight years. I was
 on the land in controversy in this suit yesterday. Pro-
 fessor Hegnauer of the university was with me. In my
 judgment corn, a rather early variety, cow peas, soy
 beans and millet would be good crops to raise on the
 land in controversy. They could be raised and harvested

between the 20th of June and the first day of November.

3814 I have had experience with ensilage and silos. In silos the corn should be put when it is about three-fourths dented and one-fourth still in the milk or dull; depending somewhat on the variety of corn; the corn should be from 105 to 125 days old, from the time of planting

3815 until it is put in the silo. An early variety of corn matures in considerably less time. I would say fifteen or twenty days earlier, anyway. I have planted corn this year, on my own farm, on the 3d of July. It got ripe enough for the silo. I think that probably ninety days would be a sufficient length of time in which to raise a

3816 crop of soy beans. I think they will yield from fifteen to twenty bushels to an acre. Prices vary. I should say about \$1.50 a bushel is about the value. The hay from soy beans, if cut at the proper time, retains the leaves and has a good deal of food value. It ought to run on good soil a ton and a half to an acre. It should be as nutritious as clover. Soy beans have about the same composition as oil meal. I would rather feed millet than timothy hay, and that is what the dairymen in the dairy region of northern Illinois feed. It has more

3817 protein in it than timothy hay. I think millet would be from 10 to 25 per cent. better than timothy hay in food values per ton. We feed the hay from cow peas. It is about the same as alfalfa and is considerably more valuable than clover and richer in protein than clover. Our plan is to plant corn for silos the same as for an

3818 ordinary crop. Probably the entire crop will be used in silos. A very few stubs remain occasionally, practically none. I am familiar with a crop known as mangel-wertzel, and it is a crop that could be raised on the land in question. They are used for feeding purposes. They should be stored where it is cool and rather damp. Cattle of any kind and hogs will eat them. I think it

3819

takes about ninety to one hundred days to mature. The
 3820 average yield is twelve to twenty, sometimes twenty-
 five tons per acre. In England they raise enormous
 crops.

Cross-Examination by Mr. O'Connor.

I think that this land is pretty valuable land. I be-
 lieve you could raise rape on it. The silos at the univer-
 sity vary from ten feet in diameter to thirty feet. Ca-
 pacity from 25 to 330 tons. Some are made of wood
 3821 and some of cement. The cost varies, depending on the
 size. A silo of average size will cost about \$2 a ton
 capacity.

3822 I looked at this land with a view of using it for a dairy-
 ing proposition and with a view to raising crops for the
 purpose of feeding cattle, cows. I think probably a 300-
 ton silo would cost \$600 and the same silo in cement would
 3823 probably cost \$800. An acre of land where corn would
 run from seventy-five to eighty bushels an acre would
 make about twelve to fourteen tons cut at the proper stage
 for silo. An ordinary silo would hold the crop from
 3824 fifteen to twelve acres of land. I don't think a man
 would put a crop from 150 acres into a silo. He would
 probably feed it in some other way besides the silo. I
 cannot conceive of a man using 150 acres, all for ensi-
 lage. It is true it would take ten silos to handle a crop
 from 150 acres and twenty silos for 300 acres. A man
 3825 ought to have forty tons of feed in silos for 200 days,
 3826 counting one-tenth for waste. I think feeding five tons
 to an animal for a season would feed about thirty-three
 head from 165 tons of ensilage, assuming that to be the
 3827 crop from fifteen acres. I don't know what that land
 has ever produced, except what I saw on it yesterday.
 3828 I don't know when the water comes on that land in the
 fall nor when it comes on it in the spring. I noticed the
 corn in the cornstalks; on the land yesterday I saw the

corn which came off of there; some of it was in a wagon
 3829 and some of it was still standing on the stalks. They
 were in there with wagons yesterday when I was there.
 It was on Section 21. There was corn in it. I examined
 the corn that was in the wagon. My associate with me
 3830 also examined the corn. It was not the best corn be-
 cause that corn was the youngest in the field they were
 husking; the last planted. It was rather immature; the
 stalks were about one-half or one-third as high as on the
 majority of that land. I saw there ears that were found
 standing on the stalks, that had been missed. We both
 3831 examined that. We drove along the C., B. & Q. Railroad
 on the other land. We passed by that land and saw the
 corn there, but did not go into the land. That is the land
 3832 that lies west of the Illinois Central and south and east
 of the river; other than to drive along by it. We drove
 on the road or highway; not down across the land on the
 3833 bottoms at that point. I think I can form some judg-
 ment as to the kind of corn that was raised there, from
 looking at the stalks and examining them. We went over
 3834 a good part of Section 21. If I was going to run Sec-
 tion 21 as a dairying proposition I would put in about
 one-fourth or one-fifth of it into cow peas. The land is
 too large to run singly. It ought to be divided into sev-
 3835 eral farms; might put in about one-fifth of it into millet;
 about one-half of it into corn. You couldn't run all of
 that land for the purpose of operating one dairy. No
 man can run a dairy of 120 cows and do it successfully.
 3836 They have got to divide it into several. If I were run-
 ning a dairy and using the land for that purpose, the
 silos would necessarily have to be built on the bluff, or
 high land, where it didn't overflow. I expect you would
 have to get some land back from the bottoms on which
 3837 to build your silos. There seemed to be quite a lot of
 corn growing on the piece of land that lies west of the

Illinois Central and south of the river. I don't know how
 3838 many acres were in it. On Section 21, divided properly,
 you would have two dairy farms, roughly speaking, each
 of 200 acres. I would have a silo on each place enough
 to hold the crop from fifty acres. It would be about 550
 3839 tons of ensilage. Would probably put about one-fifth of
 the land into millet and about 50 per cent., or half of it,
 into corn. Half of the corn would be used in the silo
 3841 and the other half in shock. You could feed to the
 3842 cattle during the whole season. Each place would sup-
 3844 port about fifty or fifty-five cows. I would not put any
 mature corn into the silo. This is not too far north to
 raise soy beans. I don't know whether they have tried to
 raise them and failed. I know they have raised them up
 3845 this way and succeeded. I have seen this land several
 times before yesterday. I have ridden past it. Never
 was on the land; have ridden through both on the Rock
 Island and Illinois Central and Burlington; I can't just
 3846 say when. The corn growing on Section 21 was pretty
 largely in one field. There were some strips running
 through it where there was no corn. I have had some
 experience in raising corn. Our land at the university
 3847 is for experimental purposes and practical purposes
 also. The land in Section 21 is soft ground; land that
 drains itself easily; is of a highly porous substance; a
 good deal of clay in the ground. I think that corn would
 3848 penetrate the ground from three to five feet. If the corn
 roots struck water at three to five feet down, if it was held
 there continuously, I think you could raise a very excel-
 lent crop of corn. I am sure you could, because I have
 done it. I don't say it is an ideal condition for raising
 corn, but you could get a good crop. I don't see why it
 should make the corn soft or milky.

Re-direct Examination by Mr. Chipperfield.

There is no reason why this land should all be maintained as one farm.

3849 BENJAMIN TAYLOR, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Benjamin Taylor. I live at South Barton-
3850 ville. I am head gardener at the Peoria State Hospital. The garden and farm of the Peoria State Hospital is located in the bottoms, east of the hospital. I have been engaged in gardening river bottom lands for the last twelve years. For the last eight years in the service of the State of Illinois. The land is located in the Illinois River bottoms. It is eight feet above the low water stage of the river. The farm is about three-quarters of a mile from the river and the biggest part of it is overflow land.
3851 The land does not all lie on the same level. It is sloping. I have seen the land in controversy in this case, last Sunday. I have had a long experience, about twelve years, in the raising of market garden products. I was gardening before I went with the state institution at Bartonville, on bottom lands. Assuming that you can get on the lands in controversy in this case between the 20th day of June and the 1st day of July and have until the 1st day
3852 of November for the purpose of farming, you can raise cabbage, tomatoes, cucumbers, hubbard squash and sweet corn. You can raise a late crop of beets; cauliflowers, onions can be raised; parsley can be raised; millet can be raised; also endive; carrots would not make a crop; late crop; I mentioned sweet corn. Sweet corn takes from sixty to ninety days to mature; tomatoes mature in ninety days; cabbage about the same; squash about the

same; carrots from sixty to seventy days; cucumbers about sixty days; beets take sixty to ninety days; cauli-
 3853 flower the same; lettuce six to eight weeks; radishes the same; turnips about sixty days and endive about sixty days; millet takes from four to six weeks. I have had experience in the raising of all of these crops and have had an opportunity to see and observe the profit which is derived from the raising of them, extending over an ex-
 3854 perience of twelve years. I have an opinion, based upon my knowledge of the condition of this land, and based upon the possibility of raising these crops and the returns which are made from them, as to the fair cash market value of this land at the present time, for market gardening.

Cross-Examination by Mr. Butters.

We have from twenty-five to seventy-five or eighty acres used for gardening purposes used at Bartonville,
 3855 and raise all of the things mentioned. We have from fifteen to twenty-five insane patients that I work there. I raise very little millet. We never plant it except as a very late crop; unless we can't get on the ground to get anything else in there. If we can't get on the ground until the 1st of August, then we will plant a crop of millet, because it is too late for anything else. It is fed to the cattle. We plant our sweet corn at different times. We plant, if possible, along about the 1st of May. Cabbage we set out, an early crop, along the early part of May. We set
 3856 out some in July; about the 10th of July we plant it, the second crop. We also wait until July before we plant squash. We have from one to three acres. As far as I can see the soil down here in Section 21 is just the same as we have down in Bartonville. I don't pretend that that
 3857 is true chemically. I never heard there was a certain salt in the soil on the north side of the river that was

not in the soil on the south side of the river in the Illinois valley. I never heard that. I don't know whether squash can be raised up here in this country or not. They can be raised where I am. By looking at this land I should
 3859 judge you could raise most anything. I would want to make full investigation into this land before I embarked in the raising of those things; raising of the articles I have mentioned requires lots of help. I am sure that I could raise all of the crops that I have mentioned and get
 3860 them in by the 10th day of June. I know nothing about the conditions of this land as to when you can get on there in the spring. We can get on the highest of our ground in May. We have a kind of a basin there, low spot, where we can't get on until June. We have no levees on this land.

3861 JOHN SALTER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John Salter. I reside in the south part of Peoria County. I am a gardener; engaged for the last fifteen years; about a mile and a half west of the Illi-
 3862 nois River, or a mile and a quarter. I know of gardens in the bottom lands in that vicinity and have gardened the lands which were subject to overflow. I am farming overflow land. I have seen the lands in controversy in
 3863 this suit. I think that, assuming you could get on this land from the 20th of June and have until the 1st of November, in each year, in which to cultivate and raise a crop, that you could raise almost every kind of a vegetable except potatoes. You couldn't raise celery, I don't suppose, but you could raise tomatoes, cabbage, endive, parsley, cauliflower and turnips could all be raised. I saw some corn that had been raised there this year and

have generally observed the corn which has been raised
 3864 this year on uplands; also that raised on bottom lands.
 The most of the corn that I have seen this year is soft.
 I have observed the profits that have been and can be
 derived from the market gardening business, and based
 upon my observations of this kind and my knowledge and
 experience in that business, I have an opinion as to the
 fair cash market value of this land at the present time.
 I should judge this land would be worth \$75 to \$100 an
 acre. It takes about three months to mature sweet corn.
 3865 About three months to mature tomatoes and cabbage
 and carrots; nine weeks matures cucumbers; beets can be
 raised in two months; turnips in about five or six weeks;
 it takes about nine weeks to get a good ordinary endive
 3866 for the market. I have seen millet planted in the last
 of June make a good crop.

Cross-Examination by Mr. O'Connor.

I had not seen this land in question before Sunday. We
 spent maybe an hour on the land. We went down to
 3867 Peru and crossed the river bridge and walked south.
 We went in on the land with Mr. Hawthorne. We went
 on the land that lies east of McCormick's slough. I
 3868 wouldn't say that we walked over all the land, but we
 went over the biggest part where there was corn. We
 walked over some of the land where no corn was growing.
 I don't know how much land was in crop. We crossed
 3869 the Illinois River. I know the land and I was over
 the land located near the Illinois Central Railroad tracks
 3870 and C., B. & Q. tracks. We went down on that land.
 I remember going in on the land west of the C., B. & Q.
 and south and east of the Illinois Central. We walked
 3871 from the railroad. We were there about an hour; looked
 like tolerably good soil to me. It looks like a good place
 to raise corn. That is true of all the land in controversy

- that I examined. I think there was eighty or ninety acres in the first piece we examined. That was in corn.
- 3873 I doing my gardening, myself and my boy attend to about twenty acres. We farm some and garden some. We raise twelve or fourteen acres in corn and the rest is garden. It would take a good many men to operate a 400-acre piece of land used as a truck garden. After
- 3876 we had examined Section 21 we got on the car and rode up to La Salle.
- 3879 We examined the land south of La Salle. The land there was about the same in general character; apparently some higher. It didn't look very much different to me. I couldn't say how much land we looked at altogether. It would be a hard proposition to truck garden 150 acres, or a tract as large as that.

- 3884 CHARLES H. NICOLET, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

- My name is Charles H. Nicolet. I am by profession a civil engineer; was city engineer for the City of La Salle; have been engineer for Matthiesen and Hegeler Coal Mining Company located in the City of La Salle. In 1892 I established some bench marks in the vicinity of the City of La Salle at various street corners. I think in
- 3885 the neighborhood of twenty-five or thirty bench marks were established. They were north of the Rock Island right of way. They vary from 100 yards to six or eight hundred yards; possibly half a mile from the Rock Island tracks. I know where the Union shaft of the La Salle County Carbon Coal Company is located. I know the vein of coal there worked under the City of La Salle at the present time. Their work in that mine has extended from the north, to the north line of Fifth street,

which is about a quarter of a mile north of the shaft. After I had established these bench marks in the City of La Salle, by subsequent checkings, I observed a subsidence in that city. I observed a subsidence of about one foot in 1895 and '96, at the corner of Third street and 3886 Bucklin. A year or two later I checked up again for the purpose of making observations of this subsidence. My recollection is it had gone down a total of 1.6 feet. Since that time I have not made any further observation to see whether there is any further subsidence. I mean observation with an instrument. Ordinary observation would not detect any subsidence or settlement. I observed it at more than this one point. That is, the subsidence. It was not uniform at the different bench marks or check marks. When I found there was a subsidence at this corner mentioned I ran levels over the streets in order to determine whether the subsidence of 3887 the earth had extended extensively, and at that time it had extended just about a block each way from this bench mark. I did not afterwards determine whether the area had spread. There is a heavy limestone strata immediately under the streets, for seventy or eighty feet below the surface, and then a succession of shales, sand stone and limestone in thin layers. I have noticed the cross-section of this same deposit from the river side. It breaks off at the south line of Canal street, or just north, at a variable distance from the river, because of the bend 3888 in the river at that point. At one time there was an immense stream down through this valley and the ages cut the rock out to a considerable depth below the river bottom and this was afterwards filled up with drift, glacial drift; by erosion presumably. From the time that I established bench marks to the time when I checked up and found that there had been a subsidence of 1.6 foot over the ground where the La Salle County Carbon Coal

Company was mining, I should say roughly was about from four to five years. The amount of drift is variable. In a general way I am familiar with the geological formation of the various strata down to the coal. The third vein of coal at that point is about 350 feet below the bottom. The second vein is 200 feet down and is about five feet in thickness. The third vein is three or three and a quarter feet thick.

Cross-Examination by Mr. O'Connor.

I was city engineer of La Salle from 1893 to 1896; then with the M. & H. for sixteen years. The M. & H. Company own about one-half of the coal underlying La Salle. The M. & H. Company own practically everything of the coal that lies east of the west line of Joliet street in the City of La Salle. The coal that lies west of the east line of Joliet street in La Salle is owned by the Carbon Coal Company. They have mined out a portion of the second vein underlying La Salle. It is located contiguous to the shaft of the Carbon Coal Company. Judging from their own maps, I should say it extends something like half a mile in a circle from the Union shaft. That would extend their workings approximately to Joliet street. I don't know how much coal was taken out in the second vein. They work the second vein in what they call room and pillar work. I have never been in the second vein of the La Salle County Carbon Coal Company mine. I don't know how much coal was taken out. I can't say there has been a subsidence in the City of La Salle due to the taking out of coal. My judgment would be that the subsidence was due to that. That is, to the taking out of coal. The subsidence, as I said, was 1.6 of a foot. I am not familiar with subsidence from actual experience I am not sure that the mining of coal would show any effect on the surface at different times, but I am sure

there is an effect to be noticed in the Cities of La Salle and Peru, on the surface, from the taking out of either
 3894 the second or third vein of coal. I don't know it was from the effect of mining the coal or taking out the coal,
 3895 but my judgment is it was due to that. My judgment is based on common sense. If there has been a subsidence of this surface and there has been an excavation below, it is a natural conclusion or inference that it is due to
 3896 that excavation. I don't know when the process of subsidence begins nor progresses. I first made bench marks
 3897 in the City of La Salle in 1893 or '94. I was city engineer at that time and it was a matter of convenience for the city. I cannot at this time state in detail each one of the places where bench marks were made. I remember this one at Third and Bucklin street. I remember one also at Ninth and Sterling street, and at Crosat and Sixth street, and at Fifth and Tonti, and Fourth and Hennepin streets. I don't recall any others definitely. I cannot locate any bench marks definitely on First street. Third and Bucklin is the only one I distinctly remember. I
 3898 can't say as to whether the subsidence would be uniform in character. They have paved the City of La Salle on First street; in 1891 or 1892. They have paved Seventh street, but I can't give the date; also Bucklin street. Hiram Holmes was street commissioner when I was city engineer. The street cars were running on Third and turning south on Bucklin street in the year 1892. They had been running there for some years prior
 3899 to that. I put bench marks in the northeast corner of the street; put it on a large tree near the base of the tree. It was a spike driven in the tree. I don't know who the owner of the lot was. The lot is now vacant. I think the tree is still standing. I have not looked for that bench mark of late. It was a railroad spike that I used; an ordinary railroad spike. It was put in the base as close

to the bottom as possible. I should say six inches, maybe,
 3900 from the surface. The tree was probably fourteen
 inches in diameter. That tree has grown since that time.
 The spike was placed there in '93 or '94. I was giving
 grades for a sidewalk when I first determined that there
 had been a subsidence and it started from a known bench
 in the east part of town. I don't remember which one,
 but it is a matter of record in the city engineer's office.
 After I had finished staking out the sidewalk I carried
 my levels over to the bench to check my work. This sec-
 ond bench was the bench I marked at Third and Bucklin.
 I found that bench was apparently a foot lower than the
 3901 record. Those notes are in existence at La Salle. It is
 twenty years since I have seen them. I didn't look them
 up as a matter of refreshing my memory at this time for
 this case. My recollection is that the survey was made
 two years later, about '95, so that in the two years in
 that mark there was a difference of about a foot. Third
 street was not paved at that time. The street cars were
 running at that time. I discovered that the street had
 gone down about a block each way; about a block north
 and two blocks south. That would take it practically
 to Main street. I don't think I run any levels on Main
 street. It was not paved there at that time. On Third
 street it went to Berlin street, a block west. I am not at-
 tempting to account for it. There was no jump-off on the
 3903 street car tracks. It run down to zero at Third street,
 practically zero, and there was no settlement at Fourth
 and Bucklin, and there was practically no settlement at
 Wright and Third, that is one block east, and there was
 practically no settlement beyond Berlin, that is one block
 west. The settlement extended down to First street. I
 don't remember just how much it was at First street, but
 3904 it extended down to the Rock Island depot, down that
 street. As I remember, it was about a year and a half

or two years afterwards, along about '96 or '97, that I next examined it. I ceased to be city engineer in 1896.

The zero that I figured from was the canal lock. I think
 3905 Ed Noonan was my assistant. I think probably that
 3906 that railroad spike was sticking out of the tree an inch.
 3907 I have lived in La Salle a good many years. I think
 there is a two-story frame house on that corner. I don't
 know that the sidewalks had been affected. I didn't ob-
 3908 serve that. I couldn't say as to the street; nor as to
 the houses; or the brick buildings. I didn't notice any
 effect along the street at all.

3920 CHARLES CARNEY, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Charles Carney. I reside in La Salle. I am supervisor of track on the division of the Illinois Central Railroad located at La Salle. I have been supervisor of that division for five years last March. I know where the Illinois Central bridge is located over the Illinois River and a point six or seven hundred feet south of the Illinois Central bridge over the river. I have noticed a sinking in the tracks of the Illinois Central Railroad at that point. They have sunk maybe fourteen inches; usually in the spring and in the summer months. It is sinking continuously. I think the cause of the sinking was the taking out from under the roadbed of the coal at that point. I notified the roadmaster that the sinking
 3923 was occurring right along. I don't know that the bill for raising the tracks and maintaining it was paid by the La Salle County Carbon Coal Company, for the repair of these tracks. I reported and gave the cost for it to the superior officer and as far as the company's paying the bill, I don't know. I have not seen much sinking at that

3924 point in the last year; in the summer months of the last four years, that is prior to last year, I have noticed the sinking; this sinking of fourteen inches has occurred during the time I have been supervisor of tracks.

Cross-Examination by Mr. O'Connor.

3925 I couldn't locate the sections. The sinking was about 900 feet south of the bridge. I refer to the Illinois Central bridge. I think there are about twenty piers running across the bottoms of the Illinois Central bridge.

3926 They are large rock piers, about ten feet wide, I should judge. They are about forty feet long. The bridge is in the neighborhood of fifty-five feet high. At present it is a steel structure. It has been for the past ten years. It was a wooden structure prior to that time. After you cross the river at La Salle the track runs on a large fill, about thirty-five, maybe forty, feet high. There has been an increase in the height of the road, by repairs, gravel,

3927 and so forth, in recent years. The ground underneath the Illinois Central right of way would not be soft ground at this time. They have been running on that fifty-five or sixty years and it is hard down to the rock. I should say that the sinking seemed to show for about 100 feet and then it ceased. The track would go down, go out of line. We had to keep the track lined up there. The settling of fourteen inches extended over a period of four years, I should judge. I didn't notice much sinking in the last year. In the winter months it would be frozen, packed, and it would naturally hold the travel without

3929 settling. We ran large freight trains over there. It is a single track. The tracks would be repaired generally in the summer time. Our track men worked there all the

3930 time. I don't know what caused the sinkage. I don't know of my own knowledge whether coal has been taken out of there. I said I thought it was. I don't know of my

own knowledge. I don't know what became of the bills that were sent to the La Salle County Carbon Coal Company for repairs. I have had tracks settle out in the country at other places, at mines.

3932 C. H. TIBBS, called as a witness by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is C. H. Tibbs. I live at South Bartonville, near Peoria. I am helping the gardener at the asylum farm; raising vegetables, on some overflow land, something like a mile from the river. I have seen and examined the lands involved in this suit, located in the locality of Peru and La Salle. I was over on the land near Peru last Sunday. In color the soil is about the same as the land in the bottoms I am familiar with down the river. Between the 20th day of June and the 1st day of November, vegetables could be raised on there.

3936 CHARLES KRAUSE, called as a witness by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Charles Krause. I live in Peoria, Illinois. I am a garden trucker. I have been one all my life. I am forty-two years old. The operations are carried on in the south part of Peru. We are within the city limits. The land is partly bottom and partly upland. The bottom land overflows. I have examined the land in controversy in this suit yesterday afternoon and observed, in a general way, the kind of soil and surroundings of the land. Between the 20th day of June and the 1st day of November they could raise almost anything there in the

truck line, vegetables, except possibly onions. That is, seed onions. Potatoes is not a good paying crop for bottom land soil. I have had experience in it. Except 3938 potatoes, they could raise almost anything, sweet corn, tomatoes, cabbage, beans, lettuce, radishes and numerous other things; turnips, cauliflower, endive, cabbage; 3939 bage; all kinds of truck or garden products. I practically raise everything in the market gardener's line. I have had an opportunity to see and observe the profits to be derived from raising vegetables of that kind; the cost of raising it and so forth. Based upon my experience and knowledge, I have an opinion as to the value of this land in question in this suit for the purpose of raising these crops. I think it would be worth \$100 an acre for that purpose, at least.

3940

Cross-Examination by Mr. Butters.

In appearance the soil is very rich soil. I don't know the chemical constituents and have not had it analyzed. It would be very valuable land if the crops were not in- 3942 terfered with by the overflow. Sometimes you will strike a good market in the middle of the season. Sometimes early in the season. It is a speculative business with me, with all trucking. We find a market always for everything that we raise. Our main market is Peoria. The value of land for this purpose depends somewhat upon the market available. I know nothing about the market value of lands in this vicinity generally. I know what the market value of corn land or any other good 3843 land is in the State of Illinois. I would say that \$100 an acre was, if anything, too low a value for this land. I would not say that it was worth \$500. We usually use lime to sweeten sour land.

3945 FRED KRAUSE, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Fred Krause, Jr. I live in Peoria, 615 Griswold street. I am a gardener. I have been engaged in that line of work since I have been able to work. My age is thirty-eight years. We have forty-five acres of overflow land. We have a vegetable garden. I have seen the land involved in this suit. I have observed the character of the soil. I am familiar with overflow lands in the Illinois bottoms. Between the 20th day of June and the 1st day of November, I think most any kind of a vegetable, except those that need the winter moisture, could be raised. Everything except possibly onions and potatoes would do well. I think beans, sweet corn, tomatoes, squash, anything in the rough feed for stock, could be
3947 grown and raised on the land. I have an opinion, based on what I saw and observed and my knowledge of the gardening business, as to the fair cash market value of that land at the present time. I think it would be worth somewhere around \$75 per acre.

Cross-Examination by Mr. O'Connor.

Good corn land is selling from two to two and a half. If you could put corn in at the proper season and have it mature and yield a crop that would run from seventy to ninety bushels an acre, I would say that the land would be worth as much as good prairie land. I know nothing about the history of this land. I know the history of our bottom lands, and I think it is the same here. I think that we saw nearly the whole patch of land. I don't know how many acres. We drove over there in a hack and went down on the land near Peru. We didn't take up

any of the soil, but we pulled out weeds and saw what
 3949 it was. We didn't go all through the field, but we also
 saw the lands lying south of La Salle. We drove there
 3950 from Peru. We saw corn stalks on this land. We merely
 looked at the land that was shown to us as being the land
 that was involved in this suit.

3952 WILLIAM BARRY, a witness called by the defendant, testified as follow:

Direct Examination by Mr. Chipersfield.

My name is William Barry. I reside at Streator, Illinois. I am yard foreman and track foreman on the C. B. & Q. I live at 212 East Broadway. I have been roadmaster before I became master of the yards there up until seven years ago; was roadmaster between four and five years; from 1905 to 1910. I am acquainted with the lands of the La Salle County Carbon Coal Company involved in this suit. The C. B. & Q. tracks run across that
 3953 land. We call the tracks east and west. It is that way
 on the time card. I know the place known as Jones Crossing. It is just east of the north river bridge. The Vermillion River runs parallel with it. At a point about 1,500 feet southeast from the Illinois River and from thence running towards Jones Crossing, during the time I was roadmaster, I have observed a sinking of the tracks. It was different in different years. It would sink more at some places. We would have to go over it a few times more at some places. About a thousand feet or close to it anyway was the distance that it was sink-
 3954 ing. In the winter time we noticed it especially when the track would go each way out of line and then settle down about six inches, in the winter time, and get out of line say about four inches each way. It must have been during the time I was roadmaster, two feet or more.

Taking coal out of the Carbon Coal Company's mine, from under the track, was supposed to be the cause of the sinking. It would get a little further under the track each year. As the work progressed it would travel along the tracks. It just went down gradually; about a thousand feet altogether was covered by the sinking; perhaps 3856 a little more. I left the job in the winter time. The sinking was most noticeable in the winter time because you couldn't get the track in line then on account of the frost. It would be about eight inches out of line. Before the sinking commenced in different places in the road-bed the condition of the track was in good shape. It only sunk at the places along there where the coal had been mined.

Cross-Examination by Mr. O'Connor.

I know where the coal was taken out. I was never 3957 down in the mine. I have been down at Kangley down there where the coal was taken out, the same way our track would sink, the track settled and as soon as they stopped taking the coal, why, there was no more trouble 3959 with the track. Kangley is near Streator. The land I 3960 have in mind and refer to is east of the river bridge. I know the coal had been taken out by the settling of the track. That is why I know it. I didn't see it taken out. I wasn't down in there. Each year, as they have taken out the coal the settling kept going towards the east. That is east on our tracks, going from La Salle. I know where the dump is located on this land. That is what we 3961 call the Jonesville mine. I think the coal has been taken out a couple of thousand feet or more east from the dump. I believe, from the fact that we had repairing to do to the tracks on account of the settling; it settled there every year. I have not noticed it this year. I am not on the job any longer. I noticed it the year before

3962 last. That would be the year 1910. I have been three years off the job. I know where the land involved in this case is. I know it myself from personal experience.

3964 EMIL STEMPFEL, a witness called by the defendant testified as follows:

Direct Examination by Mr. Chipfield.

My name is Emil Stempfel. I live in Peru, Illinois. I have lived there about 54 years. My business years ago was boating. I was formerly employed by the Huse & Loomis Company, Ice and Transportation Company.

3965 I was mate of the boat. My business now is carpenter for the Illinois Zinc Company in the rolling mills. I own a small boat now, a launch, 26 feet long and about 6 feet wide. I am familiar with the Illinois River. I remember the time of the closing of the Henry Dam, but don't exactly remember the year. I know that raised the water at Peru; I should judge about five to five and a half feet; something in that neighborhood. I noticed the Illinois River up until the time that the Sanitary District channel was opened. There wasn't very much current in the river up until that time. I should say about two miles an hour. I have observed the current in the Illinois River since that time. It has more current. I should judge that at low water now the current is about two miles and a half. I know Cedar Creek. Cedar Creek is on the south side of the bayou or slough, out of which we used to cut ice. It was called the Boland slough or

3967 Huse & Loomis slough. I have seen Cedar Creek in high water. During floods or freshets I have seen it six feet high and 30 feet wide. Cedar Creek empties into the line of the Boland or Huse & McCormick's slough. There is a bar that has been formed there where Cedar Creek came in. It comes in right from the south and when it

gets to the mouth of this slough it used to run up in
 3968 this McCormick's slough. The only way, when we used
 to go there with a skiff or anything, we used to have to
 go down through the willows and around on the other
 side. There was drift wood lying there over which the
 bar has now formed. The water now in the sloughs,
 McCormick's slough, is higher than it is below; by below
 I mean in the Illinois River. It might be a foot or 18
 inches or something like that. I haven't been down
 there these last two years. I think the water is held up
 3969 in this slough higher than it is down below. I have
 known this land claimed by the La Salle County Carbon
 Coal Company and the land that Fox had and the land
 that Waugh used to farm. I know about the high waters
 of the Illinois River. I think in 1892 we had extreme
 3970 high water. I was sent across to a shop on the slough
 at one time, to get some tools, just before husking time
 and the water had come up and we rowed over in a boat
 and could just see the tassels of the corn sticking out of
 the water. I don't remember the year. I know they
 3971 raised corn on this land before 1900. I don't know how
 much or anything like that. I used to see it and was ac-
 quainted with it. I have an opinion as to what was the
 fair cash market value of that land just before 1900. If
 the coal was sold it was worth about \$50 per acre. I
 3972 think that the tiling and water pouring in all at once
 into this river and the streams after a rain, is filling this
 river up. Tiling has had a big effect on the Illinois River.
 I know that after a rain the waters all rush in at once
 and the river is filled up. I remember in the old days
 when I was boating. There is some difference in the way
 the river rises and the way it used to when I knew it.
 3973 I think since the drainage district water has come in
 and the way we used to figure the stage of the river, that
 the river has been raised about 10 inches; probably a

little more. Probably a little less. We used to judge it
 3974 by the height of the river at Tree Top Bar. Formerly
 the bottom of the river, we used to find sand, and since
 the tiling and drainage operations have been carried on
 of late years, we find two feet of mud on the bottom of
 the river. Down at the place we call Riverside Park
 there was nothing but a gravel bank for a mile. Today
 you will find three or four feet of mud. That is where
 the river is wide and it is shallower and forms there
 3976 quicker than it would in the channel. At the present
 time, without the coal, I think that that land is worth \$50
 per acre; including the coal it is worth a little more. I
 would say it is worth about \$75 per acre.

3977 *Cross-Examination by Mr. O'Connor.*

I am 61 years old. I think the Illinois River, before
 the Sanitary District water was turned in, had a current
 of two miles an hour at the bridge at Peru. It would
 run faster where the river is narrower. The wider the
 river the less the current. I think the turning in of the
 3978 water of the Sanitary District has increased the current
 half a mile an hour. When the river is high it would be
 greater. I think that would be the current in low water
 during the summer months. Up near Peru, the river is
 3979 narrow and there was always a good current there.
 There used to be a green growth, a skum on the river. It
 has not been there for years. It has not been there late-
 3980 ly. I think the Sanitary District water was turned in
 10 or 12 years ago. I noticed a little effect on the river
 from the turning in of the water. I noticed it the first
 year. I learned from the papers that the waters had
 3981 been turned in. I don't know as it made any change
 in the color of the water. I drink the water now when
 I am dry. I drank it a year ago right out of the river.
 3982 I have not noticed any difference in the water. I re-

member when Mr. Waugh had the coal company land. There was a good deal of timber on Waugh's place over there that he was farming. I don't know how much timber he cut off. I don't think it was any 70 or 80 acres I don't know how much land was fit for cultivation in the
 3983 year 1900. I don't know how much corn was raised on the land for the 10 years preceding 1900. I farmed some of that myself once. That was about 40 years ago. I have not farmed it since. I base my valuation on what they are getting for it now and one thing and another,
 3984 and from being on the ground. Fifty dollars is what I would give for it in 1900. That don't include the coal. That was for the surface. Sometimes men will go in there to cultivate all of it in the spring and they never get it out, all of it. Basing my opinion on what I have seen, the crops I have seen hauled off, there was one year
 3985 that they lost the crop. I don't remember the year. I don't know what Braun paid for his land. They have
 3986 been getting crops off the land since the district water was turned in, off and on. They had a good crop last year and they have one this year, some of those people. I don't know how many acres were planted nor I don't know how many acres were planted last year. I don't know how much corn they have in there nor how much it is possible to plant, when the water is off. There is
 3987 some corn being hauled over there now, being brought from those bottoms into the cribs at Peru, and there was
 3988 last year. I think it is Brannen's corn. I don't know how many acres there are in that piece today that can be cultivated I was considering it merely as a piece of corn
 3990 land. They tried to raise oats on it once, I know, and couldn't. I have often been on this land. It lies close to Peru. I don't know what it is worth for raising pota-
 3991 toes or other things. Corn is the only thing I have seen them raise on it. I was not considering that trucking in

3992 fixing my value. It might be just as valuable for those purposes today as it was in 1900, and it might have increased in value since 1900. Land in this neighborhood has increased a good deal out on the prairie, but I don't think this has increased any in the bottoms. There was 40 acres sold there right below Peru for \$130, about a year ago. Nobody would bid on it and it was good ground, too.

2996 EDWARD J. KELLY, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Edward J. Kelly. I reside in Chicago, Illinois. I am a civil engineer. Have been for 18 years. I am in the employ of the Sanitary District of Chicago for 18 years. I had charge of the concrete construction at Lockport, Illinois, from 1894 to 1897. From 1897 to 3997 1900 I was with the United States Government, in charge of the topographical surveys in New York and Canada. From that time until the present time I have been with the Sanitary District, five years in charge of the stadia work and surveys in the Illinois Valley. The balance of the time in charge of the North Shore Channel and general construction work in Chicago. I am familiar with the lands involved in this suit and made a survey of those lands in June, 1905, I think it was October, 1906, and in 3998 November, 1907. Made what is known as a stadia survey. In the first place, the azimuth was taken from the United States Government azimuth and established in this vicinity and carried on in our surveys. All the physical conditions are shown in this survey on those lands, the different lines, river lines, different elevations and the ground, houses, fences, ditches, anything that could be seen with the naked eye is practically shown in the

survey. This was done by tying these points in stadia boards and transit and getting the distance and the angle of the azimuth, what we call the vertical angle. In making the survey we made observations with reference to the elevations of the different portions of the lands involved. We observed the crops there growing. We made observations with reference to the timber, the spoil bank, the waste lands, anything and everything that was on the land was observed and a record made of the same. From 3999 the field notes then taken I constructed map of these premises and the premises adjacent thereto. This map is a true, accurate and correct representation of these premises and their elevations and the natural objects there found. (The plat referred to is marked Defendant's Exhibit 281.)

The outlines marked in deeper red and shaded a reddish color is the Carbon Coal Company's lands in question in this suit. I have compared the tracts thus outlined on the map with the description in the plaintiff's 4000 declaration. The premises are truly, accurately and correctly outlined on this plat so far as the lines of survey are concerned.

The waving irregular line traced in blue indicates the elevations. Every part covered by that line shows the same relative elevation. By the use of this plat I can tell with accuracy the elevation of the different portions of the premises. In a portion where the elevation is 130, from there to the line marked 131, there is a slope of one foot. It raises one foot between the lines given. Those irregular lines are called contour lines. In connection 4001 with the contour lines there are figures employed. Where the figure 130 appears, in connection with the contour lines, that shows it is 130 feet below Chicago datum. Where the figure 135 appears, that means it is 135 feet below Chicago datum. The 130 is the higher elevation of

the land, compared with 135. It would be 5 feet higher and that is true wherever these contour lines appear and where these elevations are shown. I made this survey myself. That is, with my party. That is a true, correct and accurate plat of that survey.

4002

Cross-Examination by Mr. O'Connor.

The government notes that I used in making this plat were the government lines, the triangulation lines, a starting point, we used, which we checked up afterwards by sighting on Polaris, the north star. It doesn't show
4003 the acreage. It shows the height of the bank by the river; also running along the east side of Section 21, along south of the river. It does not show the height of the bank insofar as the level of the water at any particular time is concerned. Just shows the top of the ground at the time the survey was made. It shows the bank. It shows the elevation of the water and the bank at the time the survey was made. The survey was first started in June, 1905. Part of it was made in 1906. Part, down
4004 what is known as McCormick's slough, was made in 1906. That was made in October, 1906. I don't remember what the stage of the river was then compared to 1905. I think I could tell by examining the plat. The elevation of the water here was 137.8. The elevation of
4005 the water in the river was 140.0. I determined the height of the land and the elevation to compare with the height of the water in the river at that time by using the transit. Where the contour line shows and is marked 142, compared to the point, minus 135, it shows where
4006 there was some sort of a depression. The bank there is practically uniform. It does not vary, one place above
4007 the other. The figures are correct along the bank. I know that at the time the survey was made that the figures placed on the plat and the plat was correct. I don't

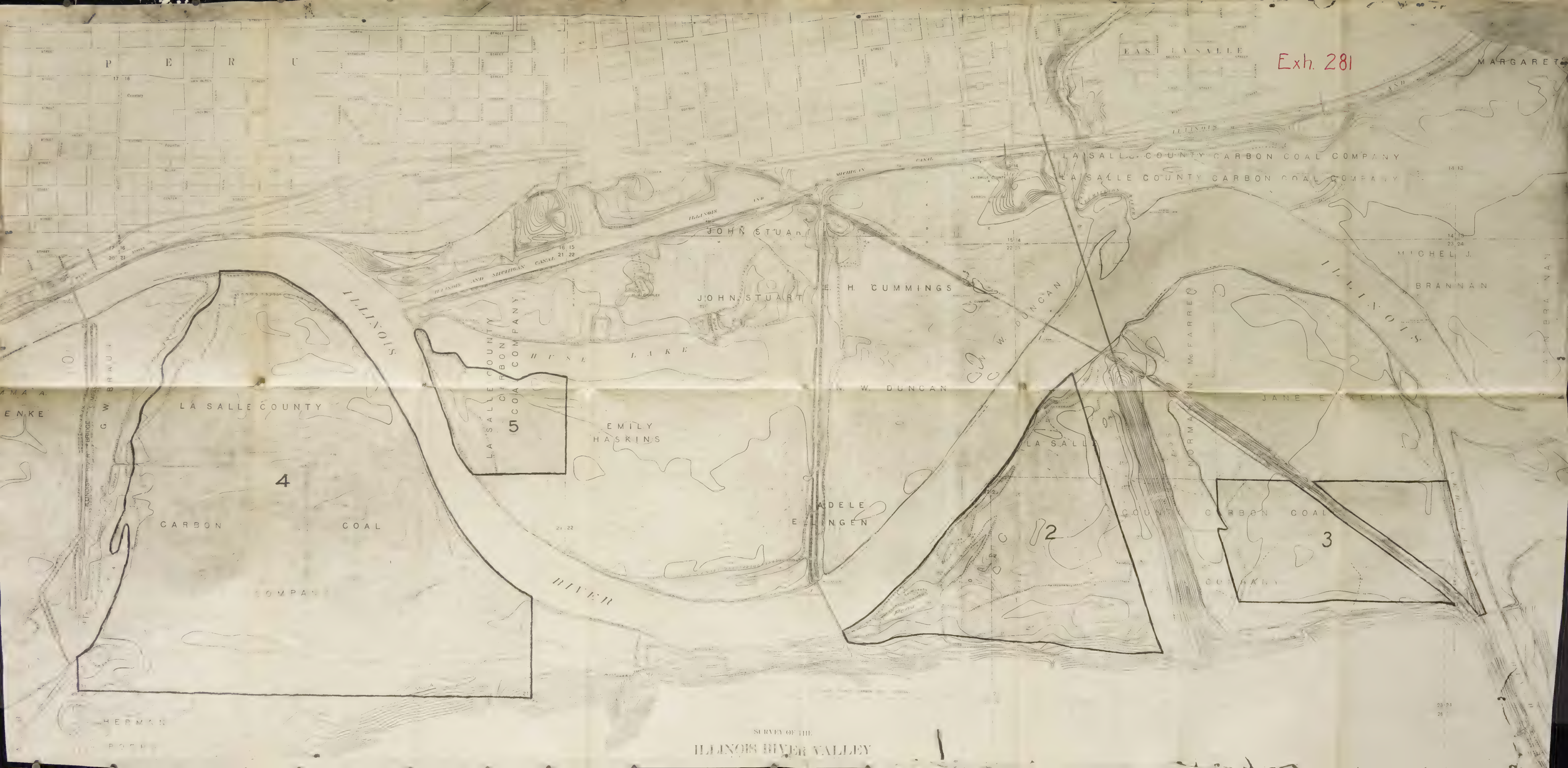
think there has been any change down there in the conditions of the bank of the river. Some might happen but I don't know. I think probably I was over that ground twenty-five times and observed the bank of the river. I think it is about the same height in the middle of the section as it is opposite the City of Peru. I don't think there is a variation of five or six feet in the height of the
4008 bank. The survey or the making of the plat took all told about five months. That is, in the different years; the last of the work being the 5th of November, 1907.
4009 Nothing on the plat to show the last day we worked.
4010 The plat was actually made by another man under my direction; under my personal supervision here in Ottawa. I did not figure up the acreage on it. I was instructed to make a general stadia survey, and went out on the ground myself and made the survey. I ran the instrument and I made part of the figures. I was out
4011 there with my crew and made the survey as surveys are ordinarily made, under conditions of that kind. I was in charge of the work. I had to rely on my recorder, Mr. T. H. Harrington, for the figures or conclusions which were given to me. The plat also shows the relative elevation of the land lying along the Illinois River near the Illinois Central Railroad, compared to the east and north
4012 bank of Section 21. The bank is lower, five feet lower. The bank along the east of the land that lies west of the Illinois Central Railroad, to the south and east of the river, within a foot or so, is uniform in height. We took a shot every 200 feet unless the surface changed. By
4013 taking a shot, I mean a man goes along the bank of the river with the stadia board and the man at the instrument sights and takes a shot every 200 feet along there. If he sees a difference in the elevation he gets an intermediate shot in there. We took the gauge readings every day. The bank line is not the water line. I think there

4014 is a difference between the elevation of the land in Section 21 compared to Section 22 and 23, of about five feet.

The map was received in evidence, marked Defendant's Exhibit 281.

Exh. 281

Exh. 281



4016

Re-direct Examination by Mr. Chipperfield.

The mark "elevation of water surface, October 30, 1906, 140" means that the water is 140 feet below Chicago datum, at the time it was taken in November, 1906.

4017 Whenever these dates appear in connection with the water surface, giving the date and elevation, it means that readings were taken at that time in the river to de-

4018 termine the elevation. In making the comparison a little while ago, between relative elevations the land 137.8 is higher than 140, by 2.2 feet. The map is drawn to a scale, about 200 feet to an inch. The outlines of the timber and crops and other objects upon this land are shown and depicted truly, correctly and accurately, as

4019 recorded in the field notes. The survey was made in connection with the general survey from Joliet to Grafton. I don't know that it was made to be used in connection with any particular law suit but it was not changed nor magnified and no fact disclosed by the ground or water surface was in any way changed in the making of this survey, and each of the recorded objects upon this plat appeared in the natural physical condition; appeared as recorded here upon this plat. When I was

4020 making this plat for the purpose of depicting physical conditions, I did not know on whose land I was making the survey. I may have had an idea it was that of the La Salle County Carbon Coal Company but the plat was not in any way, shape or manner changed from the actual, physical conditions, for the purpose of this lawsuit. The heavy red line appearing on the plat around the tracks that are numbered 2, 5 and 4 indicate the land in question in this suit. That is the boundary of the land, the outline of the land.

Re-cross Examination by Mr. O'Connor.

4023 In making the survey along the river bank you don't shift your instrument every two or three feet until you reach the brow of the hill. You try to get a uniform elevation along there such as the natural eye would see, and when you get to a point where you actually carry your level, the land, taken as a whole, is practically level.

Re-re-direct Examination by Mr. Chipperfield.

4024 Where the contour line, marked 135, shows it indicates that the land was five feet higher back there than the back. That would be back probably about 15 or 20 feet.

Re-re-cross Examination by Mr. O'Connor.

4026 I never happened out there on that land prior to the year 1905. I don't know what its condition was in the year 1900. I don't know whether the bank of the river was the same in 1905 as it was in the year 1900, or whether the condition of the land itself was the same. I don't know a thing about it up until 1905. I don't know what changes might have taken place between the year 1900 and down to the year 1908.

4028 JOE KOMINSKY, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Joe Kominsky. I work for the C. B. & Q. Railroad for over four years on the section. The section is two miles east from the plow factory and four miles and 1,500 feet west from the plow factory. I don't
 4029 go to Vermillion River. I go across the Illinois River. I go about a mile and three-quarters. I had some trouble

south of the Illinois River with my tracks. It would slide. I have to raise them up; about five or six hundred feet from the bridge; sometimes raise him about twelve inches; sometimes fourteen inches. It would sometimes show a hump and I have to raise the track to make him
 4030 twelve inches; sometimes 14. Sometimes about five or six months after will have to raise it again. I don't know how many times altogether, nor how much altogether I had to raise the track; four or five times in the year. I don't know what makes the track sink. On either side of this place where the sliding and sinking occurred the
 4031 track didn't sink there. It would show for eight or nine or ten rail lengths. The rails are 28 and 30 feet long. Up along the Vermillion it didn't sink any more. The track was right in that place, about eight rail lengths.
 4032 The road bed is made of gravel and sand and cinders. As you go near to the river it was made of the same thing.

4033 *Cross-Examination by Mr. O'Connor.*

Looking at Exhibit 13. There is the C. B. & Q. Railway running across the bottoms, or part of the bottoms. Here is the right of way of the Illinois Central. There is what we call Jones' Crossing. Here is the bridge
 4034 across the Vermillion River. I don't go within half a
 4035 mile of Jones' Crossing. The sinking of the track was on the north side of Jones' Crossing. It was on the east side of the Illinois Central right of way, probably five or six hundred feet, and extends for a distance of eight or nine lengths of rails. The sliding of the track was, it
 4036 just went down. That don't happen along every place there. It happened four or five times last year. It happened four or five times this year. I worked in charge of that section for two years up from La Salle. I formerly lived in Peru and had charge of the section in Peru. I know that this place is sinking. I haven't noticed any

4037 of the piers in the river sinking. Nor any sinking along the embankment. The embankment on the north side of the river is the same height; just as high as the embankment here. Hasn't been any change in conditions there at all. In the past two years I should say that all told the track sank twelve to fourteen inches in each year. It would make about twenty-four inches sinking since I 4040 have been there. I noticed the track sinking at other 4041 places along the road. It is sinking on the west from Peru. It is about a mile and a half this side of Spring Valley, it also is sinking; on the east side of Spring Valley. I cover all told six miles and 1,500 feet.

4044 BERT STRAUSS, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Bert Strauss. I live in La Salle, Illinois. I am on a section of the Illinois Central. My section runs from the north end of the Illinois River bridge to a mile and a quarter south of Oglesbee. I know Jones' Crossing. Between the river and that crossing I have noticed a sinking in the Illinois Central tracks. It has settled, 4045 I should judge,—I wouldn't say positively the distance but I would say about 200 feet south of the river bridge. It is anywhere from two to four inches, I should judge. Once a week or something like that I notice it. I raised the track twice since I have been there since October 1st, this last October. It needs levelling up now about four inches. Including the four inches it needs raising now and the two times I have fixed it since October, I would say it has sunk about fourteen inches. That has been since 4046 October. October 5th, I commenced to work for the Illinois Central and it has been since then; October 5, 1912.

Cross-Examination by Mr. O'Connor.

It has been continually sinking in the same spot. In that particular spot it has sunk twelve inches since the 5th of October of this year. I would say five or six rail lengths that it gradually goes down. But there is about three rail lengths that is the worst, I should say about 200 feet south of the Illinois Central Bridge, south of 4047 the river. That is the only bad spot that I have no-
 4048 ticed. I don't know how many piers there are on the Illinois Central bridge, nor how wide the piers are, nor how long. I couldn't answer those questions. I don't know how high the Illinois Central bridge is nor how high is the grade nor the embankment on which the railroad runs. I should judge from the bottom to the top it is twenty feet; maybe more than that. I am not sure.
 4049 There are depressions at other places on the track but this is the one place where it is worst. I have not been acquainted with the Illinois Central for many years. I have lived in and around La Salle since the 1st of Octo-
 4050 ber, 1912. I don't know what causes the sinking or depressions.

JOHN MARINO, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John Marino. I live in La Salle. I work
 4051 for the Illinois Central. I work for the Illinois Central from the river. I see the track go down. It goes down
 4052 near Jones, north depot; about a mile and three-quarters south of the Illinois Central bridge the track sinks. Sometimes a foot, sometimes four inches, sometimes six inches. I have seen it sink two or three times. I have been there three years. The track has been sinking all

the time. About forty rail lengths, more or less, we have trouble with the track. There are other places that sink only a little.

4054 *Cross-Examination by Mr. O'Connor.*

I know the bridge across the Illinois River. The place I speak of the sinking is about a mile south of that. I refer to the depot in Oglesbee. There are two depots in Oglesbee. The old one and the new one; the north depot and the south depot. The sinking was about one-sixth
4055 of a mile further south than the south depot. It might have been more. The track has been sinking at that point for the past three years; going down three or four times; sometimes we go in there once a week, sometimes
4056 two. Sometimes the track sinks three inches, four or five. That has been going on for three years at this place.

4057 OTTO SCHULTZ, called as a witness by the defendant, testified as follows:

Direct Examination by Mr. Chipfield.

My name is Otto Schultz. I reside in Peru. My business is coal mining. I work in the mines of the La Salle County Carbon Coal Company and I am familiar with the system of mining known as the long wall system. I have worked at it for about 35 years; several years in iron mines and about thirty years in coal mines. I know the third vein of coal in the La Salle field, and it goes about three feet; sometimes a little more, three feet and a half.

4058 They dig under the coal. That is what they call mining. Sometimes they have two feet mining; sometimes they have four or five; sometimes have two and a half

feet mining; in the La Salle County Carbon Coal Company mining they undermine it sometimes two feet; sometimes three feet. If the coal don't break they mine four feet. They put the dirt back that they take out.

4059 That is what they call the gob. After the coal is taken out they have to put up props and they generally have the coal props, they leave the props in there; sometimes the props will stand for two or three months and won't break; some other places if you put them in to-day, to-morrow when you come in again it is broke. The weight comes on them. The prop has to break, that is all. Of course, the earth settles and comes down. It don't settle very fast. Sometimes it settles pretty fast and some-places it comes down about an inch and a half and sometimes two inches, before you take the coal down, where

4060 the prop is down already. I have worked in places where we took the coal out and the top was heavy and came down about two or three inches. Some places has more weight on top than some other places. Sometimes

4061 it comes down very sudden. Other places it takes some time. As the earth settles they have to brush the entries, what they call brush; take some of them back; take two feet of rock and brush off the inside, because the earth settles there; sometimes about a foot; sometimes six inches. That rock is brushed off to give the mule a chance to travel, to get the coal out. It settles right along. It settles gradually and I couldn't tell exactly how much. Some places, after a couple of years or so, the top and the bottom might be together and there wouldn't be any gob left and then it is a squeeze right there; sometimes there is a foot or so between. I have seen the gob squeezed foot; sometimes it is narrower than that. It

4062 depends on just how the weight is. Some places there is more weight than at others. The weight comes from the top. It couldn't come from below. All the coal is

taken out in the long wall system of mining. They don't leave any pillars there except where there is maybe a bridge or something like that where they have to leave the coal. Otherwise, in the long wall, the coal is all taken out. The coal is not taken out by the La Salle County Carbon Coal Company under the Illinois Central bridge at La Salle.

4063

Cross-Examination by Mr. O'Connor.

I was working in the La Salle County Carbon Coal Company mine in 1881. There is a man here who was mining coal there and they let the coal right there under the Illinois Central bridge. It was not taken out from under the railroad at that time. The Central was already there and the land owned by the Central. I am living at Peru now. I am doing outside work. Prior to that I was working in No. 3 shaft in Spring Valley. It is about two
 4064 years since I worked, since I worked for the La Salle County Carbon Coal Company. I worked at that time at the La Salle shaft. That was at the depot near the Illinois Central. I worked there in '81. I don't think they have mined underneath the City of La Salle from that shaft. The work all went to one side. The other side is not worked at all. I worked in the Union shaft,
 4066 about 10 or 12 years ago. The workings of the Union mine run south. I couldn't tell how far south they run. It is 10 or 12 years since I was working there. The Union mine is located on the east line of Peru and their workings run mostly east, up under La Salle and run north and west under the City of Peru. They seem to work steady in that mine. I couldn't tell you where the south
 4067 line of their workings now is. I don't know whether they are under the Rock Island Railroad there or not. The C., B. & Q. and the Illinois and Michigan Canal are both south of the Union mine at Peru. When I worked

4069 in the La Salle shaft I worked on the east side, on three
 south. I was driving in there. I think it was about a
 4070 mile into the workings from the shaft. I don't know
 whether it was south from the Illinois River. In mining
 with the long wall mining of coal, sometimes you use a
 4071 sprag. Put a sprag in to hold back the coal. That is
 the safest way. After you take the coal out the coal will
 break down. The brushing is done by the coal company's
 men. The company has to keep that open. They keep
 4072 the entry way at a certain height. The settling may
 start in one day. It may start at once. It doesn't, as a
 4073 rule, take a week. When you are a mile away with the
 work, the settling process where the coal is first gotten
 out is settling. The earth settles right along. It may
 4074 take quite a number of years before it is completed. I
 don't know what happens above. I know what happens
 below. I can see where it settles, but what happens above
 I couldn't tell you. I couldn't tell from looking at the
 top there if it had settled. I have lived in Peru and La
 Salle a long time.

4075 JOSEPH QUIGLEY, a witness called by the defendant, tes-
 tified as follows:

Direct Examination by Mr. Chipperfield.

My name is Joseph Quigley. I am general mine super-
 intendent for the Walsh Brothers' mine located at Mar-
 4076 quette, Illinois. Marquette is four and a half miles from
 Peru. I have been located and engaged at that mine
 4076 about five years. In a general way I know the lands of
 the La Salle County Carbon Coal Company, lying across
 from Peru and east and west of the Illinois Central
 tracks across from La Salle. I have looked them over.
 I have been acquainted with the La Salle coal field for the
 past five years. I have been engaged in the coal business

all my life, since I was 11 years of age. I am acquainted with the vein of coal that was found in the La Salle field and I am familiar with the practical operation of those mines. I have been engaged as mining superintendent for about 15 years. I have an opinion as to the fair cash market value of these lands of the La Salle County 4077 Carbon Coal Company shortly after the 17th day of January, 1900. I think the land is worth \$150 per acre, or two and one-half cents per ton.

Cross-Examination by Mr. O'Connor.

Yes, sir, I say that coal in the vicinity of La Salle was worth \$150 an acre in the year 1900, as far as my knowl- 4078 edge goes, because the field is practically unbroken. It is practically the same class of coal as we are mining at Marquette, the same thickness. I had no connection with the purchase of coal lands in 1900 or in 1908. I did not consider, in fixing my valuation, the surface of the land at all. I considered the coal only. I would think that the coal was worth the same just after 1900 as it was before 1900.

4079 JOHN CODY, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John Cody. I reside in La Salle, Illinois. I am a mine superintendent at Marquette, the third vein coal mining company. The mine is located at Marquette, Illinois. I am familiar with the location of the land of the La Salle County Carbon Coal Company across the river from Peru and La Salle and east and west of the Illinois Central and C., B. & Q., in a general way. I have been engaged in the business of mining about 18 years.

I am working in the third vein at Marquette. We call it
 4080 the third vein. I have been engaged in working the
 third vein at Marquette about 15 years. I have an opinion
 as to the fair cash market value of this property of
 the La Salle County Carbon Coal Company shortly after
 the 17th day of January, 1900. The coal rights would be
 worth about \$75.

Cross-Examination by Mr. O'Connor.

Coal always has been worth about \$75 around La Salle.
 I don't know of any coal that was bought in the year 1900
 4081 for \$75 an acre. I don't know that coal was bought at
 that time not to exceed \$30 an acre. Charley Devlin
 opened up the property that the Walsh Brothers now
 operate. I don't know what Devlin paid for that coal
 land down there per acre. It is not a fact he did not pay
 to exceed \$30 an acre for any of that coal in the year
 1900. I am confining my answer strictly to the coal. I
 am not testifying in regard to the surface at all. In my
 4082 opinion coal would be worth the same price at any time.
 It doesn't make any difference when or where.

Re-direct Examination by Mr. Chipperfield.

Q. Referring to this land adjacent to Spring Valley,
 the Marquette Company's mine, do you know whether
 your management has offered \$100 an acre for that coal
 since—

Mr. O'CONOR: To which we object.

The COURT: I sustain the objection.

Defendant excepts.

Re-cross Examination by Mr. O'Connor.

Q. Did Mr. Chipperfield represent the Walsh Brothers?
 A. He does not, sir, I don't think so.

Mr. O'CONOR: That is all.

4083 ALBERT LINDNER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Albert Lindner. I reside at Joliet. I took gaugings on the Desplaines River during the months of September and October, 1911. The gauge was located at Brannan's Bridge. I have got the records of the river stages at those points.

Q. I will ask you to produce them, if you please. Now, I will ask you to commence with the 1st day of September and give the stage of water each day, and likewise for the month of October?

The first day of September, this is 6 A. M., 1.5 and in the afternoon, 6 P. M., 1.95. On the 2nd, 1.6 in the A. M. and 1.7 in the P. M. The 3rd, 1.5 in the A. M. and 1.5 in
4084 the P. M.; 1.6 in the A. M. on the 4th and 1.7 in the P. M. On the 5th, 1.7 A. M. and 1.55, P. M. The 6th, 1.65 A. M. and 1.9 P. M. The 7th, 1.8 A. M. and 1.8 P. M. The 8th, 1.7 A. M. and 1.8 P. M. The 9th, 1.75 A. M. and 1.75 P. M. The 10th, 1.6 A. M., 1.75 P. M. The 11th, 1.65 A. M. and 1.65 P. M. The 12th, 1.75 A. M. and 1.75 P. M. The 13th, 1.7 A. M. and 1.65 P. M. The 14th, 2.05 A. M. and 2.2 P. M. The 15th, 1.9 A. M. and 1.85 P. M. The 16th, 1.85 A. M. and 1.8 P. M. The 17th, 1.65 A. M. and 1.85 P. M. The 18th, 3.15 A. M. 2.75 P. M. The 19th, 2.1 A. M. and 1.9 P. M. The 20th, 1.7 A. M. and 2.1 P. M. The 21st, 1.5 A. M. and 2. P. M. The 22d, 1.85 A. M. and 1.5 P. M. The 23d, 1.7 A. M. and 1.75 P. M. The 23d, 1.75 A. M. and 1.8 P. M. The 25th, 1.85 A. M. and 2. P. M. The 26th, 1.85 A. M. and 2.05 P. M. The 27th, 1.8 A. M. and 1.9 P. M. The 28th, 2. A. M. and 1.7 P. M. The 29th, 1.8 A. M. and 1.85 P. M. The 30th, 1.8 A. M. and 1.8 P. M.

October 1st, 1.6 A. M. and 1.9 P. M. The 2d, 2. A. M. and

4085 2. P. M. The 3d, 1.9 A. M. and 1.95 P. M. The 4th, 2.1 A. M. and 1.95 P. M. The 5th, 2.05 A. M. and 2. P. M. The 6th, 1.95 A. M. and 1.95 P. M. The 7th, 1.9 A. M. and 1.8 P. M. The 8th, 1.6 A. M. and 2. P. M. The 9th, 2. A. M. and 2.2 P. M. The 10th, 1.9 A. M. and 2.05 P. M. The 11th, 1.7 A. M. and 1.95 P. M. The 12th, 1.9 A. M. and 2. P. M. The 13th, 1.85 A. M. and 1.9 P. M. The 14th, 1.8 A. M., 1.85 P. M. The 15th, 1.6 A. M., 1.9 P. M. The 16th, 2. A. M., 2.1 P. M. The 17th, 2.05 A. M., 2. P. M. The 18th, 1.9 A. M., 2 P. M. The 19th, 2. A. M., 1.95 P. M.

This is where we change right here and we will say at 7 o'clock A. M. and 4:30 P. M. now.

The 20th, 1.9 A. M., 1.8 P. M. The 21st, 2. A. M., 1.85 P. M. The 22d, 2.05 A. M., 2 P. M. The 23d, 2.1 A. M., 1.75 P. M. The 24th, 2. A. M., 1.85 P. M. The 25th, 2. A. M., 1.9 P. M. The 26th, 2.05 A. M., 1.95 P. M. The 27th, 2. A. M., 1.75 P. M. The 28th, 2. A. M., 1.7 P. M. The 29th, 1.9 A. M., 1.65 P. M. The 30th, 1.9 A. M., 1.85 P. M. The 31st, 2. 4086 A. M., 1.95 P. M.

When I use the expression 1.95 P. M. it means one foot and ninety-five hundredths of a foot in the afternoon. That gauge is nailed to a telegraph pole. It stands on the southwest corner of Brannan's Bridge. The telegraph pole is in the water.

4087 *Cross-Examination by Mr. O'Connor.*

4088 My age is 45. I have lived in Joliet about eight years. During that eight years my occupaton has been watching on the I. & M. C. Company. I watch the bank. I started to work for the Sanitary District in March, 1908. I have been reading the gauge for the District at Brannan's Bridge on the southwest side of the river. It is about two miles from the court house in Joliet, west. It is not 4089 located right in the city. It spans the Desplaines River and the drainage. There are three spans in Brannan's

4090 Bridge. I should judge about 450 to 475 feet long. I wouldn't swear how wide the stream is at that point, about 300, 350, 400 feet, I couldn't tell you. This telegraph pole is on the southwest corner of the bridge. It was an old telegraph pole, in the water there. There is about two feet of water there now or three feet. That is right along the edge of the stream. I couldn't tell how
 4091 much it is out in the center. I never measured it. I couldn't tell you. It might be two feet, three feet; I
 4092 don't know, four feet or five, I couldn't tell you. I take the gauge readings only on the board. I don't know who put the board on the telegraph pole on the southwest corner of Brannan's bridge. There was a board there before; somebody else had put the board there. These pages that I used as a memorandum, that is the original. It put it down there first and then I copied the card every Saturday afternoon. After I copied the card I mailed it to Mr. Heilbron at Chillicothe. I just cut those pages out
 4093 of the book. I looked at the gauge first and then go back home and note it in the book. My home is about five or six blocks from the bridge. I would go down there and read the gauge and then go back home and put it down in the book and I have been doing that since 1908. On page 19 I used these figures in testifying. I didn't use
 4094 November. It is all out of the book. I have it all from 1908 somewhere. I have got the others here somewhere
 4095 in my book. On that mornng, September 1st, when I went there at 6 o'clock there was 1.5. When I got back
 4096 that afternoon at 6 o'clock it was 1.9. There was a half a foot difference between six o'clock in the morning and six o'clock in the evening of September 1st. On the evening of September 13th there was only 1.65 of a foot of water. On the morning of the 14th it was 2.05 of a foot. On the night of September 19th at 6 o'clock there was 1.85 of a foot. In the morning at 6 o'clock there was 3.15

of a foot. On the 20th of September there was 1.7 of a foot at 6 o'clock in the morning. At 6 o'clock that same evening there was 2.1 feet. On the 21st of September in 4098 the morning there was 1.5 feet. In the evening there was 2. feet. There was a difference of six inches.

4099 *Re-direct Examination by Mr. Chipperfield.*

I read the gauge for the Sanitary District. I don't work for them in any other way. That is my full employment for the Sanitary District. I work for the I. & M. C. I have been taking those gauges from that time down to this.

4100 CHARLES HOESCH, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Charles Hoesch. I reside in Peru, Illinois. I have been in the saloon business for a while. I have been a coal miner at one time. It is 11 years since I have been a coal miner. I worked in the mines of the La Salle County Carbon Coal Company. I know the third vein of coal to a certain extent. I know the method of long wall mining. Coal is removed in long wall mining by under- 4101 mining the coal. Ordinarily the coal taken out varies from six inches to two or three or four feet, according to the way the coal breaks. In the place where I worked, between 12 and 18 inches was taken away. Then the coal is removed. By taking the coal away from under the roof the roof naturally settles and it breaks before you can take her away most of the time. Props are put under the roof. When the weight comes down sometimes they break and sometimes they don't with the weight. The distance that the roof comes down depends on just what

4102 weight is on top of it. It settles from 16 to 18 inches
 in the course of time. The dirt that is taken out in under-
 mining is naturally throwed backwards into the empty
 spaces. As the roof comes down it would naturally
 squeeze together. Sometimes it settles quick and then
 again the bottom raises up and covers so that you can't
 tell which way it settles. As far as I have seen the thick-
 ness of the dirt, when the roof and the bottom are to-
 4103 gether, is 18 or 20 inches; 12 to 18 inches of the dirt is
 taken out. Sometimes you don't take no dirt out at all
 when you mine the coal. Ordinarily you take out as
 much as I said before. That is thrown back. It stands
 there just as it was thrown out until the roof starts to
 come down and when the roof starts to come down in time
 4104 it is squeezed together. I have seen the entries. After
 they have driven an entry and after the work moves for-
 ward it is necessary to brush it out; you have to take
 down some rock. I haven't any observation of it myself,
 not exactly. They take off 10 to 12 inches, and then they
 have to take off more afterwards. They take off after-
 4105 wards 10 or 14 inches. It is according to the entries, if
 they have to take off any more as it settles. Afterwards
 they take off about the same. I can't tell you whether
 they take off any more than 24 to 28 inches. According
 to the way the roof settles, sometimes it is stationary
 for a long time and then the bottom raises or the roof
 squeezes down. They have to take off more than 18 to
 20 inches in the brushing of the roof. I can't tell you
 how much more.

4106

Cross-Examination by Mr. Butters.

In my estimation the distance up that the earth is af-
 fected by the coming together of the roof and the floor
 depends upon the slate. There is a slate roof over there
 and from there soapstone up to the roof and that settles,

and further up to the sandstone, and how far up that is, I couldn't tell you. The break is according to the progress of the mine. I couldn't tell you whether it is ever more than fifty or sixty feet above. As the particles break loose it takes more to fill, more space. As it breaks it
4107 takes a different formation.

Re-direct Examination by Mr. Chipperfield.

I didn't see any illustration that it occupies more space as the weight comes down from above. The rock packs again, crosses each other. The roof comes down and it comes down because there is some tremendous weight above pressing it down.

4108 WILLIAM MILLER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is William Miller. I reside in Peru. At present my business is that of a painter. I have been engaged in the business of mining. I have been a miner 26 years. I have worked in the shafts of the La Salle County Carbon Coal Company. I know the third vein of coal that is mined in those shafts. That coal is mined by the long wall system of mining. In the long wall system of mining you get the coal out by undermining it and then it
4109 breaks from the top. The amount they have to undermine it depends on how the weight comes. They generally undermine it a foot or two or probably three feet and then the coal has got to be wedged down. The vein of coal is from a foot to three feet thick. If they need it they put props in them. The roof settles down after the coal is taken out. The roof comes down to the packing.

Q. Does it at any time squeeze or press that packing together? A. Yes, sir.

4110 It comes down until everything that is packed under it gets into a solid mass. I have known the roof to come down probably 20 feet. From the top to the bottom I mean, 20 feet. If these props are not taken out they break. I have observed the entries and roadways of the mines. After the work has advanced it is necessary to brush these entries. In the course of four or five years, as the work advances, they take off probably three or 4111 four feet. It depends on what direction it is. Ordinarily it is three or four feet. They don't brush that off all at once. They brush it just the way it settles down. The idea of brushing is to keep the road high enough to take the coal out.

Cross-Examination by Mr. O'Connor.

I live in Peru. I am 44 years old. I have lived in Peru over 30 years. The last work I done for the La Salle County Carbon Coal Company was a little over two 4112 years ago. I say that I have noticed the effect from the roof coming down, coming up into the earth 20 feet; that is right in front. Living in Peru for the last 30 years I have been over the streets a good deal and up and down the hills there.

Q. Have you ever noticed any effect down in the City of Peru, anywhere, either on top of the bluff or below the bluff, or any part of the bluff, cement sidewalks, paving, street car tracks or anywhere else, or in any of the buildings, on the surface of the earth from the mining of the coal in that region?

Objected to by the defendant as not proper cross-examination.

The COURT: I think I will let him answer.

Defendant excepts.

4113 A. Yes, sir

I have seen it down on Water street in a building in Peru. It ain't occupied now. It is empty. Used to be a saloon in there kept by a fellow named Mackey. I don't know how it came to affect that one building particularly. I don't know what did that. I haven't noticed any effect on the paving in Peru. I haven't noticed any effect on the cement sidewalks. I haven't noticed any effect on the street car tracks.

4114 *Re-direct Examination by Mr. Chipperfield.*

In that building I seen the front settled down on it, cracked. I know where Split Rock is located. I have
4115 been down to the river. From the river towards the town there is a big ledge of rock. I don't know that it is 70 or 80 feet in thickness. Where the Rock Island Railroad is at La Salle there is still a high ledge of rock above the top of that railroad station. That ledge of rock isn't found down on the bottom at all.

Re-cross Examination by Mr. O'Connor.

I have noticed at Split Rock the dip that it takes down into the earth. It is down beneath that that we find the coal. I think the coal peters out in there.

4116 *Re-direct Examination by Mr. Chipperfield.*

There is a layer of sand rock above the slate and the slate is right above the soapstone, and the coal is right
4117 under the soapstone. The soapstone is the roof. Of that soapstone there was at least from three to four feet.

Re-re-cross Examination by Mr. O'Connor.

Above the coal we find the soapstone. The coal lies right next to the soapstone and then the next strata is slate and then we come to the soapstone.

4118 *Further Re-direct Examination by Mr. Chiperfield.*

The slate is different. I have seen it as thick as one, two or three feet.

4119 JULIUS MOSSBACH, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chiperfield.

My name is Julius Mossbach. I reside in Peru. My business has been in the lumber yard, May's Lumber Yard. I have been engaged in the lumber business since
 4120 1858. Why naturally I would observe the high water in the Illinois River. I did. Before the Sanitary District was opened in 1900 I observed lots of high water there. Well, generally it would come up in the spring and there was off years it would come up during the summer; different ways. If it is a kind of a wet season we had it would bring the river up. In 15 years before the Sanitary District was opened I did note the high water on the river. I observed just as high water as
 4121 I ever had. The water came up into my lumber yard. I fell in there one time, about up to here, in the yard. I fell in between two rafts. When the high water came up we had the lumber lying down there, a couple of boat loads of lumber and the high water came up and floated them all off and we went up as far as where the ice works is now and I had to boom it to keep it in. I was in there after it and I went down with it one Sunday. I had two rafts and the first thing that happened I was in it, away up on high ground; no bottom. That was just where the office of the coal shaft stands, about two rods west. There was a bottom there but it was not in my
 4122 reach. It didn't do me much good. The place where I went down is about three rods north of Water street,

north; up close to the Rock Island track. That is where I went in. I had a raft there keeping it in the water. It filled up, took it up there; after the water went out we piled it up again. I know where a certain culvert in Peru is located. That was after the ice came in there and I had to run for my life there. It drove me back; big cakes of ice that went up on this side and on the other side and I tried to hold some of the ice back below and I had to run because it flopped over. This
 4123 culvert is there yet. It is on Water street. It is about five rods this side of the office. I know where that row of stone and brick buildings is in Water street in Peru, those buildings that face Water street. I know where the entrances and door and thresholds of those buildings are. There hasn't been any change in the level of those doors and thresholds but in the road. I think the
 4124 road is about two feet higher. That culvert is there yet on the level of Water street. I know section 21 right across from Peru. I have observed the ice on section 21. Section 21 was all covered many times. I have observed it before the Sanitary District was opened, within 15 years before the Sanitary District was opened,
 4125 I have observed the ice going across section 21. Right here is the bend (illustrating on map) in through here. It comes up through here, the bend. The river makes a big bend and comes down by Shippingsport and then strikes the bottom below this point and runs right over into Peru. When the ice came it went through here with a boom and struck right over here in this slough, McCormick's slough. It came across the land. It cut off the top of a big elm tree in here. It must be 14 feet above the ground where the ice had cut that tree off.
 4126 That was located south from there, near the Waugh farm. On the map there is Water street (indicating). It is close to 14 feet, above the ground. A big elm tree

and that was done in the ice of 1858. In 1858 that was
 4127 done, but you could see it 15 years afterwards. I saw
 the people who farmed that land. They husked corn
 right below it on the other side of the slough with skiffs.
 I saw them up there with skiffs. I couldn't see any-
 thing there but right across from Peru, below there,
 that round piece in there, why I saw them husking corn
 and they did husk corn in skiffs. There is a bridge in
 the Peru road where it crosses the Huse slough. There
 is a road across there containing a bridge. I know of
 4128 their constructing work with reference to that bridge
 for the purpose of protecting it from the ice that came
 across the land. Some years ago we had to go over
 there when the bridge company was there, and May was
 one of the company and Huse and others and we went
 over there one time and we put in big elm trees, so
 if the ice should come above the bridge it would slide up
 on them and save the bridge. I have seen it over these
 bottoms 10 feet deep for that matter. I ain't seen no
 boats in the bottoms; I haven't. This water was about
 10 feet deep when the ice goes; that is generally when
 the ice goes out. We rafted the lumber and held it there
 until the water got away and then we separated it. We
 4129 put cedar poles around it, the boom that we put around
 it was cedar poles; cedar poles and then lashed them
 together right there in Water street. Why one Sunday
 morning we went down there and I had to get \$75 worth
 of ropes to hold the boom and bring the rope clear up
 to the Rock Island to hold them.

Cross-Examination by Mr. O'Connor.

4130 I am 78 years old. Yes, I am going back to 1858. The
 ice I speak of was there in 1858 and the year the tree
 was cut. I don't remember when we had the last high
 water in Peru. High water comes there now. I don't

think it is anything different than it used to be. I can't
 4131 tell the year, but I remember one year in the month
 of May, it may have been 1892, yes, I think we had tre-
 mendous high water in 1883. The year we lost the lum-
 ber was before that. We didn't lose any lumber, we
 ketched it. I never kept any track of the years. It is
 a few years before 1880. I have been with the Mays
 4132 ever since I started. I think it was around 1876 when
 the high water affected the lumber. I think that section
 21 is the piece of land there in the lower bottom. I
 didn't try to buy any of the land there before 1900 but
 4133 Mr. May did; 100 acres. I didn't put any value on this
 land but May told me if we could buy that land over
 there it would probably be worth something. That was
 the time there was some good crops on there, three
 years succeeding, good crops. I don't remember what
 year that was. That land was all in corn at that time.
 4134 Mr. May had rented that and we put some stock down
 there and we put some fences in there to keep the cattle
 in. We put on temporary fences. It was not necessary
 to take them down, when the water came, it took them
 along. I had a few acres myself planted in there. I
 don't remember the year. It was considered good corn
 land; raised good crops. When the water kept away it
 was good. We had a big crop of corn down there. Yes,
 we could get good corn there when the water kept away.

Re-direct Examination by Mr. Chipperfield.

We figured upon getting four or five years out of ten
 upon that land. I had a friend down there working
 and I helped him financially and he had at least two
 years when he was drowned out. He came to me and
 said, "Give me a hundred dollars and I will try it again."
 I said, "You better not try it any more." Well, he
 went on and he failed again; he lost everything he put

in. That was three years straight and after that three years, the fourth year he got a good crop again.

Re-cross Examination by Mr. O'Connor.

I remember the crops that were raised on this land in 1893. Just as quick as the Chicago lumber ceased and we had nothing more to do in the river with sorting and piling of lumber, down at the water's edge, why I had no further interest in it. I didn't care whether the
 4136 bottoms were up or down. I paid no attention to it. Mr. Waugh pastured some cattle on that piece. I don't know anything about that. I have not farmed any of that land in the last thirty years. I don't know what was raised on it between 1890 and 1902. I was where I could see the crops. Some nice corn over there and I have seen some poor corn. Some nice corn generally when they had no water and the crop would not get wet. It
 4137 would run all the way from 70 to 80 bushels of corn. I think the story of their getting 100 bushels to an acre is all talk. When you get 60 to 80 bushels of corn you can be satisfied. That is a big yield. Sometimes they got 60 to 80 bushels; sometimes they didn't. There is pieces over there, that is high pieces, where they got good corn; very seldom that the ice is over there. Section 21 is as good land as you could find anywhere in the neighborhood.

Re-re-direct Examination by Mr. Chipperfield.

I have no recollection of any cattle being drowned there by high waters coming up on the bottoms. I re-
 4138 member of them having to take cattle out of there. They put fences there temporarily. We had a bridge across there. That land was always regarded as a gamble, whether you could get a crop out of it or not.

4139 JOHN J. MILLER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John J. Miller. I reside at Peru, Illinois. I have been stationary engineer for a good many years; also superintendent of the water light plant; four years street superintendent. I am now employed at a place called the American Electric Light Company. I was formerly employed by the Heins Lumber Company. I started to work for them in 1873 and continued until about 1900. The mill was moved from the south side of what we call Water street to the north side and then about 300 feet to the east, in 1887, in the fall of the year. After
 4140 we moved the mill we had some very high water in the '80's, in the late '80's. The first high water I remember was in 1892. That was very high. At the place where the mill is now it did not damage it any there. One time they had an overflow before we moved. That was prior to 1887; I couldn't state exactly the year; it was in the '80's. It came almost up to our grates in the boilers. They were perhaps something like two feet or two and a half lower than the level of the street.
 4141 The boilers were in the south side of the building. The building was standing on the south side of Water street, practically overhanging the river. I would judge it was 22 or 24 feet above the level of the river in low water. I haven't the exact measurements. The water at that time was in the cellars along Water street, across the street. The thresholds of the stores and doors and cellars in those old buildings stand today just as they were at that time. The level of Water street has not been changed at all; not to my knowledge. There may have been a
 4142 trifle when they brick the road. The thresholds and

doors and cellars of the buildings, with one or two exceptions, are just the same as they were then. I remember the current of the Illinois River before the Sanitary District waters were turned into the valley. I couldn't make any statement of how much at low water but there wasn't hardly any. Many times we had a green scum over there and it stayed for weeks in the summer. There was very little current. Since the Sanitary District water went in there there is a difference in the current. I couldn't answer exactly, but it has a
4143 pretty fair current there now. There is a little difference in the stage of the river in low water now than from what it was then. It is a little higher in low water. We had marks on the stones and on those buildings. I don't think it was a foot. I think it was between six inches and a foot. I know Henry Meyers, the bridge tender. I know the bottom lands immediately in the vicinity of his place over there. I have seen them every day for forty years. Henry Meyers, in the last two or three years, has raised garden truck over there; all kinds of small stuff to sell; bring it around peddling it around places. I guess it made a pretty fair crop, so far as I know. I know the lands of the La Salle County Carbon Coal Company across the Illinois River in section 21
4144 and also east and west of the Illinois Central Railroad. I am acquainted and have an opinion as to the value of the lands mentioned, shortly after the Sanitary District was opened. Lands were sold right there for \$45. I
4145 never was in the land business and I didn't buy any. I should say that that land was worth in the neighborhood of \$45 to \$50. I know of transfers that were made in that neighborhood. I know of a sale to McCaleb from Mr. McCormick. The land was located just south of Water street, just where the road bends to the southwest. There was a portion of it lying on the west side of the other

portion to the southeast, across the river road. It was close to this land. The sale was made, I should judge, along about 1896 or 1897. To the best of my knowledge I worked close to the man who bought it; I think it 4146 was \$45 per acre. I know of the sale of the Huse & Loomis land to Ernat Brothers. The Huse & Loomis Company had a representative there who used to live in Peru. His name was Herman Bent. He came up and made the deal. We were neighbors and friends. He lived in the same place I did and he came up and made a deal. To the best of my knowledge it was about 1899 to 1901; along in there somewhere. There was something like 250 acres and the consideration was in the neighborhood of \$45 per acre. I understood from him that the coal was not sold at that time but was included 4147 in the sale. The Ernats bought the coal along with the land. They afterwards sold the coal.

Cross-Examination by Mr. O'Connor.

I think the Sanitary District water was turned in about 1900. I couldn't tell you how many acres are in section 21 lying south and west of the river and east of McCor- 4148 mick's slough. I know where section 21 is located. I don't know how much was in cultivation in the year 1900. That would have nothing to do with my placing a value on the land. I was figuring on all of it. There was some of it that was poor, slough, and so forth. I don't know how much of it was under cultivation. I know they raised corn there. I saw Mr. Waugh when he was farming it. He had it rented out many times. The 4149 transactions on the land were made in that neighborhood and about that time. In making my estimate I certainly included the coal, only some of it was not sold. 4150 I don't know what they paid for the coal in the year 1900. I think that the coal was valued something like

\$12 or \$15 up to \$20 an acre. I didn't hear of any one giving \$75 an acre for coal about the year 1900. I don't know anything about the value of coal in the year 1900, not taking the coal alone. I didn't hear what the people were getting for it. I understood they were getting
4151 from \$15 to \$25 per acre. That is what it was sold for at that time, so far as I know. In placing a valuation upon the surface of the land, in the neighborhood of \$35 or \$40 an acre, I didn't keep the dates but it was in the neighborhood of 1900, a year or so before and a year or a short time afterwards, the land was worth,
4152 the surface was worth in the neighborhood of \$25 to \$35 an acre. I knew the condition of the land from the year 1893 down to the year 1901. I don't know who was farming it during that period. I don't know how many acres were in crop. I know that some of the years they raised good corn there. I know of my own knowledge and I was over the ground during some of those
4153 years. I didn't farm any of it during those years; never farmed any of it in my life. I don't know how much that land would run in bushels. If the water didn't catch it it was good corn land. I remember the high water of 1892. The bottoms were flooded that year. I remember the high waters of 1883. I think that was before we moved our business. Those two years stand out prominently as years of high water. A good many acres of it was in cultivation during the years 1883 down to 1892; I don't know the number of acres; never farmed any bottoms anywhere; never had any experience in farming bottom lands; never farmed any land anywhere. I owned some land. I own some land today. I own some
4154 land in Nebraska. I never owned any land in Illinois. I had in mind, in placing my valuation, the use that the land could be put to. It could be used the same as before if the water didn't—I had in mind to raise corn whenever

4155 the water didn't get them. That is what I had in mind at that time. I didn't particularly consider the land as desirable or didn't think of it for truck gardening purposes. They might have raised cabbages and carrots and spinach and lettuce. They could have raised some millet. I guess they could have raised cow peas. I don't know what it would have been worth for that purpose.

4156 I didn't pay any attention to the land any more than I know about these other sales. That is what I base my judgment on. I don't know how many acres were in McCormick's piece. McCormick had quite a tract there. It was divided by the river. That is further down west. Some of the McCormick land was lower than section 21. The Braun place was considered as good as the Waugh

4157 place. I think they farmed their land together. I never bought or sold any bottom lands myself. I took into consideration, in fixing the valuation, the productivity of the land, what the land produces. I answered in view of what I knew from the time I started to work up there.

4158 I have seen where they planted the corn many times in the spring and then again in June, when it was up perhaps a foot high and in a day or two the water was over it. Sometimes they went to work and replanted it again and then it was a failure. Those years I am speaking of was exactly before 1900. There was one year, it was in 1898, that year I remember. 1898, yes, I remember that year. A flood came when the corn was up quite high and in 24 hours afterwards no one could get in with a plow. If I had money I would not invest it in no bottom land. I don't know exactly when the Sanitary water was turned in but I think it was in 1898. The water came up on the land in the summer or in the

4159 spring, after the planting of the corn. I remember Mr. Waugh's farm was rented out, and Braun's. There were quite a few of the teamsters farming in there. I

don't know whether Ed Pyka was in there. I don't know whether Joe Greiner was in there that year. Some of them farmed that land. If they replanted it in 1898 they might have got some good corn yet in some of the higher
 4160 places. I remember the year 1898 when the corn was that high and they couldn't get in. It might have been replanted and they got some off of the high land; that might have been. I don't remember exactly how it was in 1897. I can't say for sure about them years but there was several times; yes, sir, a good many times. I remember the year 1892. I told you about the high water in 1893. I couldn't answer you that question as to whether the crop planted in the years 1893, 1894, 1895, 1896 and
 4161 1897 was disturbed at all. The crop was lost in the flood of 1883. Several times between the year 1883 down to the year 1892 the water came up on the land and affected the crops. I couldn't mention just what years. I should judge every fourth year, or something like that.

Q. Does the water come up there today as much as it did before? A. Yes.

Q. Not much difference though, is there? A. Oh, I don't know, there is some, perhaps.

There is a couple of places there that they don't farm as much later years as they did before. The low places, of course, it might have been a little more. There are low spots in that piece; pieces that are not as high as others. It is not uniform in height. I told you before I don't know how much of it is not planted today that was
 4163 planted before 1900. I don't know if it is a fact that not half as much is planted today as was before 1900. It may be. In the last eight or nine years some mighty good corn was raised there; I have seen some of it, yes. I haven't seen any of it this year. I saw some of it last year that was mighty good; when they hauled some across the bridge. Maybe the water did get up on the

land in some places last year in September and flooded the crop; it might have been on some places, I don't know. I didn't see it there in 1911. I told you where
 4164 I lived before. I didn't change my place; was where I could see the river every day. I have no recollection as to the time the water came up and covered section 21 last year. I couldn't tell you what time it was last year that I met a wagon of mighty good corn coming across the Peru bridge. I don't know whether it was
 4165 in October or November. I don't know what the condition of the weather was at that time. Do you think I know all them people that drive wagons? I don't know the name of the driver of that wagon. I don't know whether it is any of your business whether I was riding
 4166 ing or walking or what I was doing. Maybe I was sitting down. I did answer that question. I told you I was down on Water street and saw them come across there. Now, was I walking or standing still or driving, I don't know that that makes any difference to you. I didn't meet the wagon on the bridge. I told you I saw the wagon coming across the bridge. I was east of the bridge when I met the wagon. The
 4167 man drove east. I don't know who the man was. There are some cribs located west of the road on Water street. They were not hauling that corn to the cribs. I was on the sidewalk at the time I met the corn. The wagon
 4168 was on the street going east; that is what I told you. To be sure I stopped when I seen the wagon; standing there watching them drive east. To be sure I could see the corn in the wagon from the sidewalk. It was
 4169 just a common box wagon with a top on. I don't know about what the height of a double wagon box is. To be sure the corn was up above the top. I know the color
 4170 of the corn. The color was like any other corn we bring
 4171 in at that time of the year. It was like any other corn

4172 they bring out of the bottoms. I told you it was like any other corn they bring out of the bottoms, any other corn they haul in there. It was yellow.

CLINTON D. SARGEANT, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Clinton D. Sargeant. I reside in Utica. I work for the Utica Farmers' Elevator Company at the present time. I own a farm in Waltham township. I know of the drainage operations in Waltham and Wallace townships. Those drainage operations are a drainage ditch about six miles long, the main chanel. It is supposed to be six-foot bottom and twelve-foot top, but we don't run that way according to the grade. According to the grade, you know, the ditch is in some places ten feet deep and some places six. There must be about 3,000 acres in there. It discharges into the Pecum-Sauggam Creek. I can't tell you just exactly the section. It empties back seven miles from the river. The
4174 Peccumsauggam creek empties into the Illinois River. Yes, I know the drainage district that drains into Indian or Buck creek. That is known as the Freedom Drainage Ditch. I don't know how much land is drained by that. Previous to the draining of this territory in Waltham and Wallace townships the land was swampy, practically, swamps, and since it is the finest in the country. Our land was sold out on the 20th of September, 1899. It is upland, well improved, yes, sir. My business has been farming. I have been engaged in the government service, in the capacity of railway mail service clerk. I
4175 am now supervisor of Utica Township. I know the land across from Peru and La Salle, east of the Peru road and east and west of the Illinois Central right of way

claimed by the La Salle County Carbon Coal Company. I know them, yes, sir. In my judgment and opinion that land, just before January 17, 1900, was worth from \$30 to \$50.

Cross-Examination by Mr. Butters.

4176 The basis for estimating the value of land is improvements, and so forth. The productivity has something to do with it. The question of fertilizing has not entered into the question with farmers until the last few years. It has something to do with it. Those drainage districts were in Wallace and Waltham Townships. It was finished about 1900; it was started out 1886 and finished later. I wouldn't be positive as to whether it opened into the Peccumsauggam creek in 1896, in the spring. Yes, I know something about it. I hauled the stuff away from it. I had a contract to haul the dredge to Utica. I wouldn't say positively that was the spring
4177 of 1896. It was along about 1900 it was finished; from 1896 to 1900 it was finished. It took them quite a while to put that through. They commenced down at the bottom end, what we call the Probst farm. The overflow always did go into the Peccumsauggam creek. That is the only outlet it had. I am familiar with the land on either side of the Illinois Central, on section 23, to the extent of being over it and seeing it. I used to haul brick off of some of it. I have seen something growing on it before 1900. I have seen it when there wasn't a
4178 good crop on it between 1893 and 1900. I can't say to give positive years, but we used to figure four crops out of five; four crops out of five. It is commonly understood by those who are familiar with bottom lands, if they get four crops out of five, it will produce more than up-
4179 land. That is what I have heard. Yes, that is what

we have always been led to understand. I don't know how much that land has been running an acre. No, sir, I never saw any corn come off that land. I don't know anything about it. Yes, sir, I have farmed bottom lands further up east; worked on it. I would not change my opinion whatever, if this land, from the year 1893 down to the year 1900 produced nine consecutive crops averaging from 50 to 60 bushels an acre; simply because it is never considered sure. Yes, the uplands, that is tile drained, there is a partial failure there once about every eight or nine years; that is all true. Yes, you run a
4180 chance, certainly. I am not prejudiced against bottom lands so that I would deprive them of their value. Upland was worth in 1900 about \$75. No, I am not getting that low. Ours sold on the 20th for \$75 to \$77.50. I
4181 don't know that lots of lands, farms, in this country, were sold for \$100 or thereabouts, from \$90 to \$100 in the year 1898. I don't know that. I say that it is the fact and ours was sold at auction. Yes, ours was a public sale and that is why I base my opinion on that. I should say it was worth only \$30 to \$50 because there is no improvement on it and you can't keep a fence or anything else on it. I consider improvement on a farm of some value. I took into consideration the fact you are never required to seed it down with clover or use other
4182 fertilizer. You have got to have somebody work there that depends on something else for a living. I am aware of the fact that building sites can be had in close proximity to this land in the City of Peru. I discount it that way. It is simply my notion of it, my opinion, yes, sir. I base my opinion on the risk. I discount it on the risk and the value of improvements and so forth. The extreme productiveness of the land is an unknown quantity.

4183 OWEN McDERMOTT, a witness called by the defendant,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Owen McDermott. I reside on Ninth street, La Salle. My business has been teaming for the last 25 years. I know Charles Dooley. He is farming Carbon Coal Company land north of La Salle. He is farming. I guess he gets a share. I have known the bottoms down on the Illinois River about as long as I can remember.

4184 My age is 68 years. I know a man by the name of Clark and Rockwell. I think they were the first that broke it up. That is east of the Central bridge. I was away from here for twelve years during the '70's, up to 1882, and from 1870 to 1882, I was at Livingston, so I couldn't tell what the high water was on the Illinois River during that time. I returned in 1882 and since that time I have lived right over there in La Salle. I have had an opportunity since I came back to observe the high waters of the Illinois River and the bottoms across the river don't overflow quite as quick as they do on this side. I didn't observe the bottoms over there a great deal. My work never took me over there. I have been

4185 acquainted with them for a considerable time. I don't really know what they are valued at since, but in the '60's they were selling at from \$30 to \$35. Well, I couldn't tell what they are worth since. I couldn't tell you what

4186 they have been worth since. I couldn't tell you the value of these lands just before 1900. I can't express an opinion, not to say what they were worth. I never heard of but one piece being sold down on the bottoms. I wouldn't say it was since 1900; one piece sold there. I couldn't say

4186 as I have an opinion as to the market value of this land just before 1900. I know of the land being overflowed

from time to time. In 1882 I think they were overflowed. The rise came on very sudden, I think. In the fall they were overflowed and some corn was taken away in the fall of 1882 and there was some of it under water in June. I think the last two or three years they have been under water pretty late in the spring. The last two or three years have been pretty wet years. There was
4187 some of it pretty wet for a while. Taking into consideration all I know or have seen and observed about these lands I should say they were worth about \$35, before 1900.

Cross-Examination by Mr. O'Connor.

It was in 1862, maybe in 1863, along in there, that this land was worth from \$30 to \$35 an acre. It was my opinion they were worth \$30 to \$35 an acre in 1862. That is about 40 years before 1900. They might have increased a little in value during that 40 years. I think they have decreased lately, in the last eight or nine years. In 1860 or 1862 it was worth from \$30 to \$35
4188 an acre. I couldn't say that it increased in value any after the year 1900. That particular land hasn't increased in value. There is no improvements down there, you know, to raise the value. I wouldn't think the land
4189 itself went up in value. There is some pretty good crops some years; very good. I had 15 or 20 acres on it along about 1900. That was the only time from about 1873 until 1900 that I ever farmed any on it. I couldn't say as I do really know the number of acres that were actually in cultivation on any of these pieces owned by the La Salle County Carbon Coal Company from the year 1895 down to the year 1900. I don't just recall where their land is. They owned some up east of the Central. That is about all I know of their land except what is
4190 down by Peru.

Mr. O'CONOR: Q. (Referring to the map.) Can you see this from there?

A. No, I can't see very well without glasses.

I don't know how many acres there were under cultivation along by the Illinois Central and further east.
 4191 I couldn't tell about how much they had down west of the Central bridge and south of the river. I wasn't acquainted with this land down south of Peru. I had no acquaintance with that at all. I couldn't tell you nothing about the land on the south side there. No, not how many acres they have or what it will produce. I have been over there once in a while. I have been along
 4192 the railroad there. I simply observed it casually; \$30 to \$35 was a fair opinion of what it was worth in 1860 or 1862. It is not excessive. It is not low. It is about right. The value of the land did not go up in the 38 years down to the year 1900. The price of that land
 4193 stayed just where it was. They used to raise some very fine corn crops. I raised some pretty fine corn crops on there. I didn't have in mind at the time I placed my valuation upon this land, in the year 1900, that it was a corn raising proposition. I didn't consider it near as good as it was in 1860. It was not as productive. It seemed as if it was getting wore out or something. It didn't raise as good crops. It is getting pretty foul. It
 4194 has been that way now for 25 years or more; bottom lands. I don't know anything about the coal now. I didn't place a valuation on this particular land that you pointed out there to me. I didn't take no interest in it. I made no reference at all and had no knowledge in relation to section 21 south of Peru. I know about where the land is that Waugh used to farm. I have never been on the place. I did help the fellows there one year, Cos-
 4195 grove and Parsons. I didn't have that land in mind at the time I made my answer.

Re-direct Examination by Mr. Chipperfield.

In fixing my valuation on this land of the La Salle County Carbon Coal Company across the river, I had reference to the land that is off to the east; that land is a little lower, I think, than the land over by the river. I couldn't tell as to the value of the land that I helped to plow shortly before 1900. I never paid any attention to it.

JOHN WATTMAN, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John Wattman. I reside in Ottawa. I am a farmer and in the real estate business to some extent.
 4197 I have been engaged in the real estate business six or seven years. My age is 44. I am an owner of land in La Salle County. My land is located in Dayton Township, also in Ottawa Township. I know about a drainage ditch emptying into Buck Creek. I know the ditches to a certain extent. The ditch in Freedom, it was opened between two and three miles long. The ditch was constructed about three years ago, I think. Several sections of land are drained by that ditch. It empties into Buck Creek. Buck Creek empties into the Fox River. I know
 4198 about the use of tile in that section, in the section emptying into that ditch. I couldn't say positively what size it was but between 14 and 18-inch tile in different branches. I know about other ditches that empty into the same channel, Buck Creek. There is another ditch, a larger ditch, in Wallace, that also comes into the same creek. I couldn't say how much that drains. That is a larger territory and larger ditch. I am generally acquainted throughout this land. I know where the lands

of the La Salle County Carbon Coal Company are located across the river from Peru and La Salle. I recently made an examination of those lands. I have resided in 4199 this county about 26 or 27 years. I have an opinion as to what was the fair cash market value of those lands shortly before 1900. In my opinion they were worth about \$40 an acre. I have an opinion as to the value of those lands at the present time. In my judgment they would be worth anyhow \$100. I know the Huse slough. I have examined it somewhat, yes. I know about the liability of Huse's slough to saturate the land that lies close to it. That kind of helps to make the land wet around there.

4200

Cross-Examination by Mr. Butters.

I had reference to the big slough here (indicating on the map). That is the one I have in mind. I first had my attention called to this land about three weeks ago. 4201 I had seen it before. About twenty years ago. I didn't look at it for the purpose of finding out what it was worth years ago. I was on the land three weeks ago. I couldn't say what day of the month it was. I was there twice. The first time I didn't spend very much time on it. I didn't go over it the first time; just went to it. The second time, I should judge, I spent a couple of hours. When I saw it years ago, as I said, I was just traveling along on the railroad, the Rock Island road. 4202 I am sure I saw it from the Rock Island road. I am not mistaken when I say I saw it from the Rock Island road. I have seen that road for the last 15 or 20 years; the bottom lands. When I placed my valuation on that land at \$40 an acre, in 1900, I assumed that the land was practically in the same condition it is now. I don't see 4203 much change in the condition of the land in regard to water conditions. I didn't look at this land at any time

before three weeks ago for the purpose of determining the market value. I did not assume this land was better in 1900 than it is now, when I say it was worth \$40 an acre. It would be worth as much in 1885, in my estimation. I am not taking into consideration the fluctuation of the market value of the land. There has been an appreciation from 50 to 75 per cent. on the uplands, since 1900. There wasn't any farm worth \$150 an acre at that time. There are some lands selling for close to \$300 now. As far as I can remember the highest price that was paid was around about \$90, in 1900. There has been more of an increase than 75 to 100 per cent. Well, with the exceptions it has been 200 per cent. I just took a general average. I don't know as I took into consideration that before 1900, from the year 1893 down to 1900, that it raised from 60 to 80 bushels to an acre. If that is so, that all this land is colored here, colored red or pink, in the portions three, two, five and four on this map, exhibit 281, if it raised from 60 bushels to the acre during the years 1893, 1894, 1895, 1896, 1897, 1898, 1899 and 1900, it would be worth more. I don't think it would be worth \$100 an acre. If it produced that amount of crops it would be worth \$90 in 1900. I consider that land is quick soil. In going over the country and looking for farms I take into consideration their fertility. A farm that is sterile and washed out will not bring as much as one that has good black loam. Buildings are a minor and secondary consideration; it depends somewhat. You can put the soil on a farm too, now. It is more expensive to take a sterile farm that is foul and sterile, a clay soil, and fertilize it, than to put buildings on it.

Re-direct Examination by Mr. Chipperfield.

It is true that land commenced to appreciate some few years ago. That appreciation commenced along about 1897 or 1898. It is true that before that time land was substantially at a level price, with few acres changing hands. I don't know of any land in La Salle County that sold as high as for \$75 an acre in 1897 or 1898. The appreciation has been steady and continuous ever since that time. I took the general average of all that 4309 land, to which Mr. Butters referred. I did not, when I set the price of \$40 there, I didn't say for just the cultivated land. I meant the whole tract. My idea of the value would be affected by the fact that you could never raise any annual pasture on this land. My idea of the value would be affected by the fact you could have no buildings on this land. My idea of the value would be affected by the fact that you could never even have a well on the land. My idea of the value would be affected by the fact you couldn't even have as much as 4210 a pig sty on the land. I don't think fences could be erected on this land. That would have something to do with lessening the value. When I spoke of the \$90 land, I took into consideration that this land was not subject to overflow. If, from the evidence, this land was subject to overflow, that would then affect my notion of the value. It was taken into consideration the location of all of this land that I have mentioned, that caused me to fix the price at \$35 to \$40 an acre.

Re-cross Examination by Mr. Butters.

In fixing the value at \$100 an acre now, I don't mean that each acre would be worth \$100 of the land that is not in corn this year. I am speaking about the land that would raise that much corn, as I understood you. I said .

4211 it was probably worth \$100 an acre now. That was an estimate. I didn't say I would pay that for it, but I think probably it would bring it. If it was all as good as that is in corn this year and was all of that character and bore good crops in 1900, my answer would be different from what I gave it, \$35 to \$40 an acre.

4213 VERNE BATCHELLER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Verne Batcheller. I reside in Peru. My business is farming and dairy. I conduct a dairy farm. My farm is located two and a half miles northwest of Peru. In feeding my dairy I use ensilage. I have about 35 head of cows. I have 2 silos; one is 12 by 30 and one is 14 by 40. I have raised some corn down there on the bottom lands off and on. I know the kind of corn that is
4214 used for silage. When the ears begin to harden you use this corn. In my judgment and opinion there can be raised on this bottom land ensilage corn between the 20th day of June and the middle of October, to a sufficient stage of development to be fed for silo corn; just as good corn as any for silo.

Cross-Examination by Mr. O'Connor.

I farm about 20 acres; some of it is rented land. All together, I have a farm of about 100 acres. I put about
4215 40 acres of that 100 acres into corn. I have about as much as I can get into the silos. Sometimes, if it is heavy corn, it won't go into the silos. I have two silos; the smaller is 12 by 30; 12 feet in diameter by 30 feet high. The larger is 14 by 40. The smaller one is of wood staves and the larger one of concrete staves. It

cost me \$300 to build the smaller one and the larger one cost about \$400. They claim the small one will hold 90 4216 tons. It won't hold that much. I put about five acres in it last year. The larger one has a supposed capacity of 120 ton. I have filled it. I filled the both of them with about 16 acres. We put 16 acres of corn into the two silos. That would make about 11 acres in the larger one. Well, they put up larger ones. I have seen larger ones in this neighborhood. I expect to feed about thirty cows until the grass comes, about the middle of May. Once in a while I feed them mature corn.

4217 I raise that myself. I could let the corn go on and mature and husk it. I could let some of the corn I raise now mature and husk it and put it in cribs. The corn I put in the silos, I could let that mature. The corn I put in the silos I cut that at an early stage, before it matures. If I didn't have the silos I could let that go on and mature. A little less than half of my 40 acres of 4218 corn I put into silos. I farm a little on the bottom lands. I have been down there farming this year. I have seen the land that Waugh used to farm. I should say they cut some of the crop that was raised there this year for the silos. Well, Tiernann lives there. I think that is the Waugh farm. I have not been on the land 4219 you indicate on the map this year. I don't know anything about the kind of corn that was raised on that land this year. You would have to have a good many silos to contain all the corn raised on that land. I don't know just where that land involved in this litigation is. I was not down there this summer for the purpose of seeing any land that is south of the river, to the south of La Salle. I don't know anything about the crops that have been raised on that land in the past ten years. I don't know how much it was in acreage. I don't know whether there is any corn there at all or not. I never no-

4220 ticed. You can put immature corn into the silos. We planted the corn all together, the 40-acre piece. I could mature it all, if I wanted to, but since I am in the dairy business and want to feed some of it to my 30 cows I cut some of it and put it into the silos before it matures.

Re-direct Examination by Mr. Chipperfield.

I have no idea that any man who is farming a piece of ground would raise it all for the purpose of silage corn. He would diversify his crop.

4221 *Re-cross Examination by Mr. O'Connor.*

If he had a large farm he would plant some oats if it would grow oats; put some in corn and put some in oats and some in wheat.

Re-direct Examination by Mr. Chipperfield.

He might not want any oats and would raise millet and other variety of crops; that might be, too.

Re-re-cross Examination by Mr. O'Connor.

And he probably could raise cabbage and cow peas and carrots, if he was in the farming business, for his own use.

4222 *Re-re-direct Examination by Mr. Chipperfield.*

Land that can be divided up and put to market gardening purposes and successfully raise all kind of vegetables is good valuable land.

4223 W. A. CROSIER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is W. A. Crosier. I live in Utica Township. I am a farmer and dairyman. I am engaged in the dairy business in a small way. I have nine cows for milking. I don't know as I know Mr. Batcheller, who just left the witness stand. I use the silo. We generally cut corn for the silo as it is just hardening; after it passes the milk stage; from the 15th of September until
 4223 the 5th of October. Silage corn can be raised between the 20th of June and the 15th of October, in an ordinary year. The silage is good to feed to anything that I ever fed it to—cattle, horses, hogs and chickens. We did raise some millet in that vicinity. I live in the southwest quarter of Section 1, Utica Township. The latest I ever planted millet was something between the 4th and 10th of July; got a nice crop. It takes between that and the
 4225 1st of October to mature. It went about two and a half tons to the acre, I think; about three tons. That is good to feed the cattle. You don't want to let the seed get ripe, not perfectly ripe. If it is cut before the seed forms they feed it to horses. I have had experience in the raising of sweet corn. I think that was in '97, the time the hail storm went through. I planted it after the hail storm. It was after the 4th of July. Yes, sir, I got a nice crop. It went into the silo. Sweet corn makes good silage. Up to 19 years ago I lived two and a half miles northwest of Utica, two miles northwest of Utica.
 4226 Well, that is four miles from La Salle. We done most of our trading in La Salle. My father lived down at Granville. I passed the Peru bridge. I know where the Q. bridge is built. I know where the Illinois Central

bridge is built. I have a knowledge of farm lands in the vicinity of La Salle, a general knowledge. I know where the La Salle County Carbon Coal Company land is located right there by the Illinois Central. I don't know
 4227 just exactly where the boundary lines are. I know the general location of those lands. The land would be worth about \$35 to \$40 an acre, something like that, as an investment, shortly before 1900. I never had any experience in the raising of cow peas or soy beans. I never fed neither one of those. I have had experience in the raising of kaffir corn 12 or 13 years ago. I didn't raise it myself but I seen some of my neighbors have some. They claim that makes a good silage crop. I didn't see
 4228 it myself when it came out. I have lived in La Salle County 47 years. The ensilage corn would make about one-third more food value from an acre, by putting it into a silo, than from the other way. I never fed any millet.

Cross-Examination by Mr. O'Connor.

The land that is owned by the La Salle County Carbon Coal Company that I know about is right near the Illinois Central bridge, right under it, along through there was where I have always understood their land was. I couldn't tell you how many acres there was in there. It was on the north side of the river, away from the Illi-
 4230 nois River to the bluff. That is the land I know about there. I did not testify to land about which I had no knowledge. That is the land I know about. I have testified before in cases of the Sanitary District; not more than once. I never assisted in getting witnesses to testify. I done no work along that line at all. I live about three miles right straight down from the river. I have been to Granville since I went to see my grandfather. I cannot answer that question as to how long it is since I have been to Granville. I have been there

4231 since ten years; about seven or eight years. Granville lies southeast of Peru. I don't know just where in reference to Spring Valley. In going to Granville you cross the bridge at Peru. I noticed all the land. I always do that. Yes, that is a part of my business; always look for what is going on in the country. That is the
 4232 way we learn. It is the way most people ought to learn. I noticed the land on the west side of the road. I could see that from the highway. I saw the land on the east side of the road. I didn't notice a slough on the west side of the road. It is good farm land. There isn't a slough right close to Peru, but there is when you get up further, about a mile and a half out there, or very close to it, I think. Yes, I mean about a mile and a half from the bridge across the river at Peru. There was corn standing there on the east side, as I remember. I can't
 4233 remember everything for eight years. I always take particular notice of everything I go over. I was taking notice. I have crossed that Shippingsport bridge probably two or three times during my life. It has been longer than 16 years, I think, since I have been across the Shippingsport bridge the last time. During the past 16 years I have no knowledge as to the number of acres that were being farmed south of the Illinois River and
 4234 east of the Shippingsport bridge. I don't know the number of bushels per acre they have raised. I have no knowledge whatever on the subject. I can place a valuation only on bottom land that overflows, such land as I know about. The crop raised on this land would cut any figure with me in the placing of valuation. The number of acres that would be put into crop in certain places continuously would cut a figure. It would make a difference if I had to plant it irregularly and in spots,
 4235 rather than in one big field. The difficulty of getting in and getting implements down there on the ground and

working there would cut a figure. The fact I would have to fertilize the ground or might have to fertilize it would cut a figure. These things would all have to be considered, in placing my value which was \$35 to \$40. I said somewhere from \$35 to \$40 as an investment. I mean 4236 by what it would pay interest on. Any land ought to pay five per cent. interest. Five per cent. interest on 50 or five per cent. interest on \$100 are two different things. In figuring my valuation I figured it as an investment proposition. Five per cent. on \$100 is not as 4237 much as five per cent. on \$50. The land where I fixed the value at \$35 to \$40 an acre, I would expect to get \$1.75 to \$2.00 an acre. The land that is worth \$40 an acre, I would expect to get \$2.00 off of that. If I was getting off the land a revenue or income that was equal to five per cent. on \$100, I would consider it \$100 land. If I was getting a revenue off the land that amounted to \$10 an acre, I would consider it \$200 land. That is the way I fixed the valuation. I don't know what the income was that was produced from this land here at any time, lying south of the river and east of the Shippings- 4238 port bridge, within the past 16 years. I don't know the income that was ever produced off of it in dollars and cents, only as a general thing on the bottoms. I don't know in dollars and cents what this land, which lies to the east of the highway along which I drove to Granville produced. I have an opinion as to what it produced. My notion is this, that land in there is all overflow land. The land throughout the bottoms is now being rented for \$2.00 an acre at any time, and take your chances on getting a crop. I know it, not from personal experience, but from general knowledge of what a man learns in coming in contact with these people. I don't know 4239 just how many crops were raised on this land lying south of Peru from '93 down to 1900. I don't know the

number of acres that were in corn. I don't know the number of bushels per acre it raised. I don't know how much the corn sold for. That same condition exists as to this land that lies south of the river and east of the Shippingsport bridge. No, I am not living north of Peru now. You go up on the brewery hill road just five miles north of Ottawa, or six. Nineteen years ago we lived in Utica Township, northwest of Utica. I am living in Utica Township now. I call it five miles from the City of Ottawa, five miles and a half. Some call it five miles and some says six. I go straight west from
4240 the Rock Island Railroad to my place. I only put in six acres of corn in my silo yet. I generally put in about eight or nine, according to how much stock I have got. My silo holds 157 tons. That is located on the land. I don't think you could let the corn that would be planted for the purpose of putting into a silo go on and mature; not if I wanted to, because I use corn that would not mature and if it did mature I don't think I would have any sale for it, generally. Most usually when I can it I use the Brazilian flour corn. If I planted the ordinary
4241 corn, such as is usually planted around here. I could let it mature if I wanted to. I have got a special brand of corn and plant it for my silo. This year I have put some of the other crop into the silo. I feed all my young stock.
4242 That silo would feed about 30 head during the winter—35, maybe. I never heard of the coal land there and know nothing of its value. They generally pay about \$12.

4244 JULIAN DYCKMAN, a witness called by the defendant,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Julian Dyckman. I reside at Peru, Illinois. I am section foreman for the Rock Island Railroad. I have been with that road about 18 years. I run for about a mile west through Peru and about a mile east of La Salle. I know where the Rockwell mine
4245 of the La Salle County Carbon Coal Company is located. We had some cases of sinking of the roadbed in that vicinity. There was a sag in the track; probably a thousand feet east of the mine. It settled on an average about twelve inches in a year. The sinking has been going on for the past 15 or 16 years. There is no grade on the road there. The road is built along the hillside. That is the only place in particular where sinking has occurred. The place is some three or four hundred feet long. There is a place west of Peru about three miles where we have another case of track settling and settling
4246 of a stone culvert there. They have settled at that point about fourteen inches. The sinking seems to move east until the last year or two and since then it has not moved. About 14 years ago it was 3,000 feet west, I should judge, from where it is now. It has extended towards the east that distance in that length of time. We had to put in filling over that entire surface. It takes about two or three hundred feet and requires filling at the time and then it keeps moving along; about two or three hundred feet in a year. From the time that the
4247 track commences to settle until it finally comes to rest, we have to raise it and fill it in and then the next year it will have settled again about 12 inches and it is good again for about another year. We have to repeat the

process each year; haven't noticed any in the last two or three years; not to speak of; not more than two or three inches. The settling seems to have stopped and the ground seems to be at rest now.

4248 (Cross-examination waived.)

WILLIAM WATZLER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is William Watzler. I reside in Peru, Illinois. I am section foreman for the C. R. I. & P. Railroad. I have been section foreman for the past six years. My section starts a mile out east of La Salle, and goes
4249 a mile west of Utica. I have seen sinking in the Rock Island tracks in the vicinity of the La Salle County Carbon Coal Company's mine; it is about 600 feet east of the Rockwell shaft. I think the place of sinking was about 300 feet long. It would sink an inch or an inch
4250 and a half at a time; twice in a season. That has been kept up for three or four seasons. It has sunk about eight inches all told. It would not remain in the same locality. It would show about 300 feet in length at a time. It would take about two months before it would be
4251 noticeable again after it was fixed. About every two months for about three years it would require repairing. It would sink about six to nine inches in a year; for about three years; sinking would be from 18 to 27 inches.

(Cross-examination waived.)

ALEXANDER THIEMAN, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Alexander Thieman; I reside south of 4252 Peru on the Waugh farm, adjoining Section 21. Twenty-eight is my section. My business is farming. I know where the La Salle County Carbon Coal Company's lands, which they claim they own, are located in Section 21. I don't know the lands located west of the track, the Illinois Central track. I know the land which lies west 4253 of the Illinois Central and between that and the river. I know the land which lies east to the north of the coal dump and east and west of the C., B. & Q. right of way and north of the switch track, where their land is located. I am engaged in farming and selling milk; in the dairy business. I have been acquainted with Section 21 about 25 years. I howed corn there for Waugh. They have lost crops there once in a while over there on that land.

• 4254 I have known before 1900 that there was soft corn grown on that land and harvested there. Generally all the low land would produce soft corn. I know that of my own personal knowledge. The western part of that land is low land. There was some timber on this piece of Section 21 before 1900; the southwest corner there is about 40 acres. I don't know exactly how much of the 376-acre piece they had in corn, before 1900. My best 4255 judgment would be that there was about 75 to 80 acres of that land that never has been in cultivation, of the La Salle County Carbon Coal Company's land. On Section 21, on the southwest corner, it is all in stumps now where the timber has been cut off. There is a patch of timber in the southeast corner of that land now. I know Mud Lake. Sometimes it is called McCormick's slough.

It runs into McCormick's slough and into the river by May's lumber yard. I know the ground was planted on
4256 this Section 21 in 1911. About 300 acres were planted. They had a good crop. My land adjoins it. My land kind of slopes from the hillside, but still I have lower land than they have on theirs. I have about eight acres of bottom land that is lower than their land. During the last five years I have farmed this bottom land of mine
4257 which adjoins Section 21. (Indicating on the map.) Here is Cedar Creek. Here is the slough. I raised corn right there on the low land and this year I have put
4258 sugar cane and millet in there. I raised regular prairie corn, white corn. I got a good crop. I have used my corn for ensilage; used it last year and also this year, but at the same time it would have made hard corn; put in lots of it into ensilage this year. I have raised millet on this same land. You can put millet in in August and get a fair crop if you get the weather. I planted sugar cane there. You can plant sugar cane the last of July or first part of August. I use sugar cane for cattle
4259 feed—cows. Just cut it down, dry it and put it up. You cut it when it is pretty high, three or four feet; generally get one crop. I know about the corn that was raised on this land by Shang Cosgrove. I know where that corn was raised last year. It was raised right east of mine on Section 21. Cosgrove lost some of his corn. It must have been some time in November. He didn't make a
4259 very hard effort to get it. I offered him assistance. That land has been used for a crop this year. Shang Cosgrove farmed it again. I know about Brannen having corn planted in there. I have seen some of it. There was some of it that was a little soft. Some of it was
4261 fair corn. Some of it would grade all right, I think. I should judge there is about 200 acres planted in corn this year. I know Cedar Creek. It comes from up above

the hills there, from away up around Cedar Point. I was out in the country Sunday and saw it five miles back. In high water times it is a very heavy stream. It discharges into the slough, west of the slough bridge, into
 4262 McCormick's slough. There is a sandbar being formed there; gravel filled in by the creek. There is willows there and trees, willows and brush get in there in the spring of the year and settle there. The wash comes then from the creek. During low water it holds the slough up to a certain extent. I was down there once this summer and it looked to me about a foot or two feet that it held the water up there; the upper side of the slough. It is a pretty big slough. I should say 120 to 130 rods long. The widest part is about 40 or 50 rods, I
 4262 guess. Brannen planted some spring wheat on part of this land; put that in last spring a year ago. The weeds got ahead of it and he didn't get nothing out of it. He planted some oats there a year ago this spring. The same thing happened to them. All the seed didn't come up. He got in there early enough to plant spring wheat and to plant oats. Waugh cut some timber out there three years ago. I couldn't exactly say how much because they cut lots of timber there this year. They cut some of it off for props. They have been cutting off this
 4264 last year yet. I don't know exactly how much. The stumps were left there when Waugh cut the timber off. That land where the timber was cut had never been cultivated yet. Some fellows from town worked an acre or two in between the stumps once in a while, but the land generally has not been cultivated. I observed this land both before 1900 and since 1900, and I don't notice any difference in the general cropping condition of this land since 1900 than it was before 1900. I haven't paid much attention to the last crops. I have noticed that they would lose a crop once in a while. My father used to

farm some of this land on the bottoms. All of the land
4265 in Section 21 is not exactly on the same level. There
is parts of Section 21 where they did not plant any this
year. It is on the lowest spots, on the west side. There
is a low place there. They tried to drain a part of the
surface of this land last year by opening ditches. It was
a ditch about five feet wide and about three or four feet
deep to drain the slough. With the exception of that
slough there has been no other attempt made to drain the
surface of this land. When the water is down in the
river in the summer time, I would judge it is about five
feet below the surface of this land. There has been no
attempt, as far as I know, to drain this land into the
4266 river when the water was low. In my judgment, of the
375 acres in Section 21, south of the river, I should judge
there is about 100 acres that has never been cultivated
at any time, around the edges and in the sloughs, wet
places, timber and in waste land. I have an opinion as
to the fair cash market value of this land shortly before
1900. I think it was probably worth \$100 an acre. I
4267 include the coal in that. The land was worth probably
4268 for agricultural purposes about \$75. I think that shortly
after 1900, after the Sanitary District water was turned
in, and, at the present time, that the land would be worth
\$75, or the same amount for agricultural purposes; the
same as it was before. My idea is it was worth the same.
I feed my ensilage corn to the cattle. It makes good
green food in the winter, the same as krout. It agrees
4269 with the stock very well. They do well on it. The sugar
cane that I planted, I let it lay until it dries. The weather
cures it some; just as you would hay. We stack it up
the same as hay in stacks. It will keep probably a cou-
ple of years. I haven't ever kept it that long. I never
have enough to keep that long. It will keep as well as
hay. I regard cane as better than hay, better than timo-

thy hay, for feeding purposes. It is about the same as clover hay. I have noticed the current of the Illinois River before 1900; I have also noticed it since 1900. There is a little more current now than there was then. I couldn't say what is the difference. It is some faster. That is all I have been noticing. It seems to float things faster. I can't exactly tell how fast. I can't give a better estimate.

Cross-Examination by Mr. O'Connor.

This land was worth \$75 at any time before 1900. It was worth that much in 1898; hasn't changed much in 4271 several years. I think it would be worth the same to-day. I think that taking the coal land it is worth \$25 an acre.

4273-74-75 House Document.

Discharge measurements of Illinois and Des Plaines rivers.

ILLINOIS RIVER AT MORRIS, ILL.

[Survey of Illinois and Des Plaines rivers, 1899-1900. The gauge readings refer to gauge at the highway bridge. Elevation of zero=486.61, Memphis datum.]

Date.	Gauge reading	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1900.	<i>Fect.</i>	<i>Sq. feet.</i>	<i>Fect.</i>	<i>Fect.</i>	<i>Fect.</i>	<i>Cu. ft.</i>		
May 3	3.08	3,380	.....	.....	1.26	4,264	Falling.....	Light upstream wind.
Apr. 29	3.22	3,447	.....	.....	1.41	4,850	do.....	
May 2	3.52	3,659	.....	.....	1.44	5,253	do.....	
Apr. 30	3.80	3,778	.....	.....	1.67	6,322	Rising.....	
May 5	3.88	3,822	.....	.....	1.60	6,109	Falling.....	
May 2	3.92	3,849	.....	.....	1.47	5,664	do.....	Strong upstream wind.
Apr. 30	4.30	4,053	.....	.....	1.78	7,213	Rising.....	
May 4	4.38	4,116	.....	.....	1.75	7,222	do.....	
Do...	4.51	4,184	.....	.....	1.77	7,388	do.....	
May 1	4.64	4,189	.....	.....	1.83	7,684	do.....	
Apr. 28	5.29	4,637	.....	.....	1.98	9,200	Stationary..	
Apr. 27	5.47	4,745	.....	.....	2.03	9,636	Falling.....	
Apr. 26	5.64	4,833	.....	.....	2.13	10,272	do.....	Very windy.

NOTE.—All measurements were taken from the highway bridge with a large Price current meter.

Discharge measurements of Illinois and Des Plaines rivers—Continued.

ILLINOIS RIVER AT MORRIS, ILL.—Continued.

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1892.	<i>Feet.</i>	<i>Sq. feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Cu. ft.</i>		
May 10	9.95	9,505	.....	.....	2.79	26,532	.....	
Do...	9.95	9,499	.....	.....	2.78	26,416	.....	
Do...	9.98	9,523	.....	.....	2.82	26,853	.....	23 cubic feet of total discharge was over bottom.
Do...	10.00	9,587	.....	.....	2.77	26,564	.....	27 cubic feet of total discharge was over bottom.
Do...	10.05	9,533	.....	.....	2.72	26,013	.....	52 cubic feet of total discharge was over bottom.
Do...	10.22	9,617	.....	.....	2.91	28,029	.....	58 cubic feet of total discharge was over bottom.
May 9	11.05	10,236	.....	.....	3.03	31,116	.....	113 cubic feet of total discharge was over bottom.
Do...	11.21	10,265	.....	.....	2.93	30,166	.....	122 cubic feet of total discharge was over bottom.
Do...	11.31	10,351	.....	.....	3.04	31,599	.....	128 cubic feet of total discharge was over bottom.
Do...	11.68	10,555	.....	.....	3.07	32,598	.....	148 cubic feet of total discharge was over bottom.
July 3	11.75	9,907	.....	.....	3.27	32,860	.....	
May 9	11.90	10,763	.....	.....	3.12	33,756	.....	158 cubic feet of total discharge was over bottom.
July 3	12.05	10,278	.....	.....	3.30	33,870	.....	
Do...	12.57	10,631	.....	.....	3.47	36,873	.....	
July 4	12.67	10,719	.....	.....	3.13	33,526	.....	
July 3	12.82	10,619	.....	.....	3.40	36,073	.....	
July 4	12.90	10,861	.....	.....	3.24	35,216	.....	
May 9	12.32	11,035	.....	.....	3.15	34,935	.....	181 cubic feet of total discharge was over bottom.
May 8	13.85	12,208	.....	.....	3.30	41,037	.....	773 cubic feet of total discharge was over bottom.
Do...	14.12	12,389	.....	.....	3.32	42,466	.....	1,377 cubic feet of total discharge was over bottom.
Do...	14.77	12,682	.....	.....	3.14	43,202	.....	3,414 cubic feet of total discharge was over bottom.
Do...	15.15	13,078	.....	.....	3.25	47,291	.....	4,796 cubic feet of total discharge was over bottom.
May 7	17.40	14,677	.....	.....	2.97	60,394	.....	16,743 cubic feet of total discharge was over bottom.
Do...	17.75	14,870	.....	.....	3.07	62,313	.....	Do.
Do...	18.27	15,214	.....	.....	2.94	65,790	.....	20,997 cubic feet of total discharge was over bottom.
May 6	18.58	15,449	.....	.....	3.01	67,680	.....	Do.
Do...	19.55	16,079	.....	.....	3.06	73,730	.....	24,614 cubic feet of total discharge was over bottom.

NOTE.—Where a discharge over the bottom is shown, the areas and velocities given are for main channel only.

ILLINOIS RIVER NEAR DIVINE, ILL.

[Survey of Illinois and Des Plaines rivers, 1902-1904. The gauge readings refer to gauge on Elgin, Joliet and Eastern Railroad bridge. Elevation of zero=587.20, Memphis datum.]

1904.								
June 15	-94.6	4,313	9.8	565	1.23	5,300	Stationary..	No wind (taken from cable about 600 feet below Elgin, Joliet and Eastern Railroad bridge).
July 23	-94.5	4,353	9.7	575	1.22	5,304	do.....	Light downstream wind (taken from cable about 600 feet below Elgin, Joliet and Eastern Railroad bridge).
July 8	-94.3	4,337	9.7	560	1.36	5,910	do.....	Light upstream wind (taken from cable about 600 feet below Elgin, Joliet and Eastern Railroad bridge).

NOTE.—Each of the above measurements is the mean of two consecutive measurements. All were taken with a Price current meter, large size.

Discharge measurements of Illinois and Des Plaines rivers—Continued.

ILLINOIS RIVER NEAR DIVINE, ILL.

[Taken under the direction of the United States Geological Survey. The gauge readings refer to gauge on Elgin, Joliet and Eastern Railroad bridge. Elevation of zero=587.20, Memphis datum.]

Date.	Gauge reading.	Area of cross section.	Maximum depth.	Width.	Mean velocity per second.	Discharge per second.	Status of river.	Remarks.
1903.	<i>Feet.</i>	<i>Sq. ft.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>	<i>Cu. ft.</i>		
Nov. 11	-94.15	4,465	.....	553	1.70	7,596	.....	
May 10	-94.10	4,823	.....	553	1.69	8,394	Stationary..	Light downstream wind.
Sept. 26	-94.10	4,199	.....	.....	1.75	7,319	Falling.....	
Oct. 24	-94.10	4,317	.....	.....	1.78	7,673	.....	
Aug. 31	-93.99	3,856	.....	.....	1.83	7,044	Falling.....	
July 12	-93.83	4,556	.....	.....	1.64	7,465	do.....	
1904.								
May 19	-93.00	5,139	.....	565	1.91	9,845	.....	Strong downstream wind.
1903.								
Apr. 9	-91.12	6,605	.....	594	2.04	13,482	Falling.....	Do.
1904.								
May 2	-90.51	6,454	.....	560	2.46	15,889	.....	Light downstream wind.
Apr. 17	-89.63	6,937	.....	581	2.44	16,927	.....	Conditions good.
Apr. 26	-88.15	7,740	.....	585	2.62	20,313	.....	Do.
1903.								
Mar. 15	-86.84	9,182	.....	630	2.80	25,689	Falling.....	Strong downstream wind.
1904.								
Apr. 3	-82.40	11,231	.....	623	3.30	37,118	.....	Conditions good.
Mar. 27	-79.98	12,975	.....	683	3.85	50,920	.....	River overflowed right bank 1 foot deep for 250 feet; no current.
Mar. 26	-78.47	14,800	.....	949	3.86	57,097	.....	

NOTE.—Measurements in 1903 were taken from a cable about 40 feet above bridge. Those in 1904 were taken from the bridge. All were taken with a small Price current meter.

4280 ERNEST M. COX, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Ernest M. Cox. I reside at Peoria, Illinois. I am a steamboat man. I have been engaged in boating since 1894. I am a master; been licensed by the United States government as a master eleven years last June. I am familiar with the Illinois River and have been since the spring of 1895. I have sailed the Rein-
 4281 deer, which was the old government boat, state fish commission boat; the City of Peoria, the Susan, the Beeder, the City of Henry and several other small boats. I sailed the City of Peoria for eight years; it was an excursion boat; I am acquainted with the Illinois River from La Salle to its mouth. I have observed its tributaries, the streams running into the Illinois River in the last eight or ten years. The rainfall since 1900, from the tributaries to the Illinois, has been greater than it was before,
 4282 to my recollection. According to my idea, on account of the levying of these districts, from one end of the river to the other, confining the river to its river bed, makes a greater current and thereby a greater stream coming out of these tributaries; it is bound to. I haven't noticed any material change or difference in the river after the year 1900. I should think not more than 12 or 13 inches. I don't think it would make over a foot of difference at low water. I know some of the levees down stream be-
 4283 tween La Salle and the mouth of the river, in a general way; know of their being there. The stream is not as wide in high water now as it was before the construction of these levees. It has confined the river to its bank, the side where there is a levee, so they have not the overflow where the levees are. Of course, it pushes the water in

the river bed and causes a bigger current. At the present time I should think the current in there was about three miles or three miles and a half. I am taking that as an average from the source to its mouth. I know previous
 4284 to the drainage going in, previous to the levying district along the river, from one end to the other, we called it virtually then dead water. I have observed high waters on the river since '95, '94 and '95, along in there. The high waters of the river since 1900 are not as high. I have been sailing excursion business exclusively for the past six or eight years, on all parts of the river from its source to its mouth. There is a fill in the river above the dam at Henry and has been for the last six or seven years, to my knowledge. The fill, according to my estimation, when you get over with your steamboat, running from the City of Henry to Hennepin, when you get your boat over the dam, your boat will labor and that will show you are in shoal water.

4285

Cross-Examination by Mr. O'Connor.

The steamboat season is now over. I operated a boat on the river this season, the steamer Beeder. She is a small tow boat. I think she is 97 feet long; run from Peoria to Chillicothe. That is a distance of 92 miles. I
 4286 have operated a buffet in Peoria since May of this year. I wouldn't boat in the winter time. The levees I referred to are the levees below Henry. I think by confining the river to its natural bed, it makes a swifter current. It increased the current in the river. The water travels faster that way than it did before. That is on account of its being confined to a narrower channel.

4287 I say that previous to 1900 we had higher water than we have had since, outside of 1902. I didn't say that before. That is both in the tributaries and in the main

stream of the river proper. I say that the rainfall has been greater since 1900, I think, than previous to that, from my experience. The rainfall has been greater during the past ten years than at any time that I know of. I know that during the last ten years the Sanitary District has turned water into the valley; I don't know how much. I can't specially give the rainfall. Notwithstanding the fact that the Sanitary District water is coming into the valley, I think I have seen higher water before 1900 than I have seen since that time. Prior to 1900 I have seen the water every year and since then we have a better stage of water, as far as that goes, because we have had a better body of water for navigation, on account of confining the river into its banks. That is the only way I can go by. I think that at certain times of the year I have seen it higher previous than I have since. I don't remember the high water of 1883. I was not in the neighborhood at that time. I don't remember the high water of 1892. I think it was in 1895 or '96 I remember high water. I have seen the Illinois River since 1894. I was living at Meridosia at that time. That was in the spring of the year. I couldn't tell you exactly how long it stayed up. I think that year it lasted quite a long time, longer than usual. I remember other years. I think it was in 1899. That was another year of high water. I couldn't tell you what was the high mark it reached. I think that was the year before I came to Peoria. I think it was 1899. There has been a number of levees constructed down the stream in the past seven or eight years that would tend to increase the current of the river and the height of the river. They clarified the river; gave us a better current and swifter current. That current is greater and it clears the water out. It isn't the same water. I think that the stage of high water was greater before 1900 than it has been since, largely on account of

the fact that the rainfall was greater than it was prior to 1900. I don't account for it. We have never had occasion to stop navigation on account of anything in the river except on account of ice. I suppose that it might have affected the river about a foot, I should think. It largely affected the velocity of the current. I haven't noticed the water at Peru very much during the last ten years. I have been up there but didn't notice the water very much; sometimes made the trip; made it the year before last during the summer months. I didn't take any particular notice of the condition of the river at that time because we got in late at night and pulled out next morning on an excursion. That is the only time I was there last summer. In ten years I should say I had been to Peru ten times during the summer months. The question as to whether or not there is any change in the condition of the water at Peru since 1900, over what it was prior to 1900, was not in my mind. I don't know anything about it. I have noticed there is a better current. Take the current at Peru, any place between Peoria and Pekin. I can't give you the width of the river prior to the turning in of the Sanitary water. I can't come within 200 feet of its width. At Peoria it is probably 8,000 feet wide, or more. There is a swifter current in the river. I know what the current was in the river at Peoria. It was practically dead water, practically dead water prior to 1900. I couldn't tell you the depth of the river, but in Peoria Bay it was dead water. The Illinois River is called a bay at Peoria. That is what we call Peoria Bay; it is the Illinois River proper. It is where there is a widening of the river. I was familiar with the channel prior to the year 1900. It is still about as wide as ever and the stream seems to be as dead as it ever was. There is no difference that I know of. Right below the Free bridge and the P. & P. U. bridge it has been levied since

1900, and there is a difference in the current; sometimes it is levied on one side of the stream and is opened on the other and then you would have the back overflow on one
 4302 side and the levee on the other. I think that in the past ten years, on the upper stream, from Hennepin upstream, it is clearer. I haven't noticed any difference in the current of the Illinois River upstream near Hennepin since that time. I have not had any experience up there. I haven't had occasion to notice it. There are lots of places along the river where we have to make minute observations and where they have a heavier current now than
 4303 years ago. That has been down where the levees are. I
 4304 simply had the common observation of a steamboat man and would notice a difference in the current when you get into a narrow place. That is all there is to it. That is the extent of my observing it. On an average, yes, I think the current was three miles an hour. It runs faster in some places. That is at a low water stage. The wider the
 4305 river is the smaller the current. The wider the river the less the velocity.

OTTO HETZNER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Otto Hetzner. I live in South Ottawa. I am engaged in the stock business, buying and shipping stock; for about thirty-five years; been acquainted with the value of lands in La Salle County; with the Illinois River bottoms. I bring cattle across the bridge at Peru
 4307 and cross the bottoms there; did some years ago; 15 years ago. It was just alongside of Huse slough, I think. I observed some high water in there at that time. We were driving cattle through there and they got scattered

out and they ran in there and we had an awful time getting them out of there. There was no fences or anything there. It was very low, swampy kind of land. That was more than 13 years ago. I know the land claimed by the La Salle County Carbon Coal Company opposite Peru and La Salle and south of the river. I have known it I guess for 35 years. I was over on that land recently. I saw some corn on that land. There must have been 250 acres in corn, planted in corn; something like that. That was in a piece across from Peru, there was 250 acres. I noticed the quality of the corn. It was a pretty fair quality of corn in there. I should judge it would run 35 to 40 bushels to the acre. I think that would be about the average. The best of it might have gone about 65, I thought. It ranged from that down below. I know the piece of land of the La Salle County Carbon Coal Company south of the river and west of the Illinois Central and also the land east of the Illinois Central and on both sides of the 4309 C. B. & Q. I have an opinion as to the fair cash market value of that land shortly after January 17, 1900. The way that the lands were selling, I think that land ought to be worth \$35 to \$40.

Cross-Examination by Mr. Butters.

I said before 1900. I didn't give the value after 1900, 4310 but I don't think there is any difference. I don't think there is any difference in the value in 1900 and in 1901. I know about the Sanitary District and I think I know when the water was turned in; not the exact date. I have traveled there and noticed the effect of the Sanitary District water on the land along the river. Pursuant to my 4311 business I go everywhere; haven't any way of fixing the date when I was over there. I think I was driving ten or twelve head of cattle. I have not been thinking this

matter over very much before I took the witness stand. I knew I was going to be asked about these matters. I talked with Mr. Beebe some. I never talked to Mr. Chip-
4312 erfield; about 15 years ago is as near as I can come to fixing the date when I drove over there. We were going north at the time. I have seen the map of this land at
4313 the Clifton Hotel. I think a man by the name of Strauss was with me at that time. The two of us were driving cattle. It was about 10 or 11 o'clock in the morning. We must have spent three or four hours before we got the cattle on the bridge. They went over on the land, this
4315 coal company land. I think it was in May or April sometime, somewhere along there. I think there was corn in there then. There were a great many weeds in there, too. I remember that. I saw a man working in the corn field. I couldn't tell you how much corn there was. I am sure it was in Section 21. It was right east of the bridge at
4317 the present time and the bridge is there now. I have gone past the land on both sides of the Illinois Central, many times. About a week ago is when I went over the last time. I have been down there several times off and
4318 on two or three years ago. I don't think that this land would be worth any more money than I have said. I base my judgment on what uplands were selling for at that time. Upland was selling at that time along about \$85 to \$100. I don't think on upland a man is running the same risk he does on that bottom land. I am not inter-
4319 ested in this case. I am not getting anything today while I am here in attendance. I own a farm myself; have an interest in a farm out here in Grand Ridge; 120 acres. The title is in my wife, my second wife. The
4320 sheriff ordered me to come here. I think I have been twice in the Clifton House in regard to my testimony. I was up there 15 or 20 minutes. I have not been promised anything for testifying in this case. I have never been

in this court house as a witness before in the last ten
4321 years. Never bought any land myself; never sold any.
Don't know of anybody selling any bottom land or buy-
ing any. I base my opinion on what land was selling for
at that time. I know what upland was selling for at that
time.

4322 *Re-direct Examination by Mr. Chipperfield.*

I took into consideration the fact that no buildings,
no fences and no permanent improvements could be put
on that land in fixing my value.

HENRY L. HOSSACK, a witness called by the defendant,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Henry L. Hossack. I reside at Ottawa. I
4323 am looking after my daughter's property and my wife's
and my own. I have been a contractor until the last two
or three years; have owned real estate. Have owned dur-
ing my life time 60,000 acres of land in several different
states; have been in the real estate business; two or three
years here in Ottawa and three years in Nebraska. Have
had some experience on the Illinois River in boating;
4324 that was in '82 and '83. I was at that time running a
steamboat. It was a 12 foot beam and 60 feet long. I
have carried 140 people. It was the Belle of Ottawa. I
have been along the river near Peru and during high wa-
ter I was not necessarily confined to the channel. I have
been across the Shippingsport bridge at La Salle many
times. My uncle built the piers for the Illinois Central
bridge. I was acquainted with that locality at that time.
I have been acquainted with the locality more or less. I
4325 am familiar with high waters in Ottawa here from the

Illinois River before 1900; on Main street and Shabbona street, which is the first street across the Fox River bridge. I have seen it run over the street there. I think it was about 12 or 15 feet above the level of the Fox River as it exists today. I have seen the high waters of the Illinois River. I have seen the Illinois River to run over the streets of the flats in West Ottawa. I rode over there in a steamboat. I have been across the Peru bridge a number of times. I know the land which lies east of the Peru bridge, between that and the bend of the river, and I know the land which lies west of the Illinois Central, 4326 which is south of the river. I know the land which lies east of the C. B. & Q. a short distance from Oglesby. I have an opinion as to the fair cash market value of those lands shortly before 1900. I should say it was about \$40 an acre.

Cross-Examination by Mr. Butters.

I said I had seen the water from the Fox River running over Main street. I have seen a map of these lands before. I know where the lands are. I have seen them from the river and from the road; seen them from the Peru bridge and Shippingsport bridge and from the Illinois Central bridge. I seen them 55 years ago and from that on probably every three or four years. I was generally in some kind of a conveyance going through that country. I was on the road down by them where I could see them in the last few days. I was on the Peru bridge and the Shippingsport bridge and walked across the Illinois Central bridge. Assuming there was about 375 4328 acres of tillable land in section 21 and assuming that from '93 down to and including 1900 that land raised a crop of upwards 60 bushels to the acre, good sound marketable corn, the lands would be worth a great deal more than I

said, if that was the fact. The land is more fertile than upland. Of course, you can't make a home on it. If the land didn't overflow of course it would be more valuable. I think they could afford to lose two out of every ten crops and still regard it as valuable.

4329 *Re-direct Examination by Mr. Chipperfield.*

I consider the constant risk there would be of the water coming down at any time and overwhelming the land, and that was considered by me in fixing my value of \$40, and that was based on my experience and observation, and the fact that no buildings could be erected on the land.

4330 JOHN MCBRIDE, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is John McBride. I reside in Ottawa. My business is that of a carpenter. I have lived in Ottawa 40 or 45 years. I have husked on this land down by the Illinois Central bridge and I am pretty familiar with the lands by husking through them; have seen the lands that are involved in this suit, lying across from Peru; east of the Peru road; a tract of probably 375 acres. And also the land which lies to the west of the Illinois Central and south of the Illinois River and on each side of the
4331 C. B. & Q. I have seen all of these lands. I have seen them several times and been on them. I have not done any husking there in thirty years. I know from my previous experience of the general lay and character of the land. I have an opinion as to the value of those lands shortly before 1900. I think the lands would be worth \$25 an acre.

Cross-Examination by Mr. O'Connor.

I am 60 years old. I have lived in Ottawa about 40 or 45 years; La Salle County about the same. It is
4332 thirty years since I did any husking down in the bottoms. It has probably been three weeks since I was in La Salle or Peru. I went down and looked at this land at that time. Prior to that had not been down there in seven or eight years; went down the river at that time.
4333 We first looked at that land south of Peru. We went down in an automobile from La Salle. Mr. Hossack of
4336 Ottawa was with me at the time. There is a growth of trees on this land south of Peru. There is a slough along there. There were willow trees there. We examined
4337 maybe eighty acres. You couldn't tell from where we were what the condition of the soil was. You could see the corn stalks. I think there were some bare spots in the field. We stopped there at the Peru bridge maybe
4339 five minutes. I never owned any bottom land. I have owned up hill land. I own some on the north bluff. I don't do much farming; never farmed any bottom land at all; I don't know how much of this land was in crop before 1900. The only time I saw it prior to that it was covered with water, the whole of it. I can't tell you the
4340 date. I don't know how much it was possible to crop in 1900. I think all the land would be good for would be for the coal that was under it. The value I placed upon it was largely for the value of the coal. That was about
4341 all that I would ever want to put in it. I think the coal was worth \$25 an acre in 1900, yes. The coal and the land together. The land I don't consider worth much of anything, not the surface itself is not worth much more than
4343 \$5 an acre. I had in mind its condition about 1900 or before in fixing its value. I have been on that land from 1900 down to this time. I have been by it; between 1890

and 1900 I have been on it. I can't tell you when. I was in there hunting. We passed by there. I have been in
 4344 there hunting within ten years. I was never on this land
 4345 when it was dry. I don't remember when the bridge was changed across the river. I don't think that bridge was there. I don't think the Q. bridge was there. I saw
 4349 the land that lies west of the Illinois Central. We looked at that from the embankment of the Illinois Central. I was viewing the premises at that time involved in this litigation. I understood that. I couldn't state how many acres there were in that piece. There were trees on the
 4350 piece adjoining the Illinois Central, between where we
 4351 stood and this land. The land south of Peru and also that south of La Salle looked pretty much alike to me. I don't think there would be much of any difference in the price. I would place the same value on the land near the Illinois Central in 1900, \$25 an acre. My opinion is if
 4352 there is coal under it that is about all it is worth anything for; that is my opinion.

4354 WILLIAM B. PUSEY, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is William B. Pusey. I reside in Ottawa. Business, real estate and insurance. I have been engaged in that business in Ottawa for seven or eight years. Prior
 4355 to that I was teaching school. I am acquainted with La Salle and Peru. I know the lands across the river from Peru, east of the Peru turnpike or dike and the land between that and the river, and the land east and west of the Illinois Central opposite La Salle. I am acquainted with all those lands, being lands claimed by the La Salle County Carbon Coal Company; have seen them many

times. I don't know how many times nor for how many years, but especially since 1890. I have an opinion as to what was the fair cash market value of those lands shortly before 1900. Comparing it with other land about it I would say between \$25 and \$30 an acre.

4356 *Cross-Examination by Mr. O'Connor.*

I don't personally own any farm lands now; never did; used to own land in Fall River Township; have been in the real estate business in Ottawa seven or eight years; formerly taught school. I have handled city property in
 4357 Ottawa and also country property. I taught school in Fall River Township and in the vicinity of La Salle and Peru. I think the land in question, mentioned by me, is known as Section 21. It lies south of Peru. I went out on the land. I saw three or four different pieces of land. (Witness indicates tracts on the map.) I crossed this
 4358 bridge a great many times but especially recently from down here and after we crossed the bridge we drove in here until we got to the bayou, and we looked over the
 4359 land and didn't think it necessary to go any further. I then came across the Central bridge and went down the bluff. I went over on this land a little ways and walked to the bluff and looked down at the land; looked at the piece marked number 2 and number 3, divided apparently by the railroad. I crossed the bridge there on a bicycle a number of times and have walked out on the land, too; was down in the vicinity of that land a good many times prior to the year 1900. In 1890 I crossed the Central bridge going to Normal. I have been down in the vicinity
 4360 of this land that lies south of Peru. They seemed to have corn on it when I passed there in 1898. There was some corn and some weeds; plenty of weeds; in spots the corn seemed to be good; only on the edges were

4361 weeds, big high weeds. Well, they were thick. It was
just like a cane break. The weeds I should say were
seven or eight feet high. You could see them from the
dike and from the bridge. They were both there about
on a level. I was not considering, in placing my value
on this land, any value on the coal. I was not consider-
ing that at all. I don't know anything about the value
4362 of coal lands. I don't know the number of crops that
were taken off Section 21 from the year 1890 to 1900. I
don't know the number of acres in cultivation or the
bushels per acre that the corn ran or the character of
the corn raised. I took those things into consideration.
I knew something about it. I lived on a farm twenty
years and I can judge pretty well. It was a very regular
4363 piece of land. I never measured it. I couldn't say ex-
4364 actly, but I can estimate and that is all. I think there is
something over 300 acres. There is spots where they
couldn't cultivate. It is too wet, with water standing
there. It is only from hearsay that I know anything
about the acres that are there or the bushels raised per
4366 acre. I have seen the crops all spoiled there in the
4367 month of June. I know that I have seen some crops
destroyed. Never kept an accurate account and don't
know how many crops were destroyed in the space of 20
or 10 years. The June that the crop was destroyed was
4368 in 1892. That was a flood year. I know of two other
years. I am talking about that piece up there close to
the Central Railroad. The water had receded off the
4370 corn when I saw it. You could see these grounds from
the train on the Illinois Central over the embankment
without putting your head out of the window. You can
4371 see the crops growing over there. In placing my value
upon this land, I spoke in a general way, including the
whole thing, the whole bottom. That is, these pieces that
are in controversy here.

Re-direct Examination by Mr. Chipperfield.

4372 In the spring of the year of 1897 and 1898 I saw the crops destroyed on this land; in the spring of '97 and also the spring of '98 the whole bottoms there were under water. When I say the whole bottoms I am speaking in a general way; all the low land was under water.

Re-cross Examination by Mr. O'Connor.

I saw in the year 1907 the bottoms under water for more than a month. I think it was in the latter part of March and April and May. I would go beyond the first of May, I don't know what amount of this land was cropped in 1897. I saw the water on this land in the spring in 1898, during March and April. I don't know
4374 how long it stayed on there.

ORSON HALLETT, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Orson Hallett. I reside in Utica. I have quit farming. Formerly my business was that of a farmer.
4375 er. I was engaged in farming in La Salle County all my life until this spring. I lived in Utica Township over 50 years; about five miles from La Salle and Peru. I have been to Peru and La Salle from time to time, I suppose for over 45 years. I knew the Shippingsport bridge. I never used it very much but I have been across it. I have been across the road leading to Deer Park and Oglesby. I have been there a good many years ago. I know where the Illinois River bridge is. I have not been
4376 across the river on that bridge. I am acquainted in a general way with the lands that lie south from Peru and

east from the wagon road, between that and the river, including a strip here called the Braun land, and also the land lying east and west of the Illinois Central. I know all of that land. I have known that land for about 45 years. I have an opinion as to its fair cash market value shortly before 1900 and comparing that with other lands, I would not consider that worth over half as much as 4377 good prairie land. There is some land along there by the Vermillion River that is pretty good land. I suppose thirty to thirty-five dollars would be about what it is worth.

Cross-Examination by Mr. O'Connor.

I saw this land about a week or ten days ago. I was asked to go down there and look at it. I went down there 4378 and looked. I saw the land lying south of Peru. I have seen all this land I suppose dozens and dozens of times. I can't tell you just when. I have seen it since the year 1890 from this side of the river, from the north side. I 4379 had no occasion to go over there. I have been down in a boat several times. I saw it a week ago from pretty nearly all sides. I was over on the land. I don't know what that particular piece of land raised from 1890 down to the year 1900. I only know what I observed there now. I have seen the land lots of times by going down the river in a boat. I don't know the actual number of acres that were in crop from 1890 to 1900. I don't know the actual 4380 number of crops produced on that tract during those years. I don't know the character of the crops taken from the land during those years. I had no occasion to care. I don't know the number of bushels per acre that the land yielded. I have no knowledge now on that subject. I am very well acquainted with bottom lands and it makes a lot of difference what kind of land it is. That 4381 is pretty low soggy land, I think. There is a good deal

of that land that slopes to the south. I think that bay up here is not very well drained. It was wet when I saw it a week ago. I did not take into consideration, in fixing my value, the coal that underlaid this land. I did not consider that at all. I don't know about the crops that were raised on that land since 1902 down to the present time, nor about the acreage, or the character of the crop, or the amount of it. I know the land near the Central. I don't know how many acres out there were actually in crop, nor how the crop matured, nor when they could put the crops in, prior to 1900. Now, if they can crop it at
 4382 all they can crop it right along. They always could. They can put corn in year after year. You can't do that on up hill land. You have got to use different tactics altogether.

Defendant offers in evidence the charter of the La Salle County Carbon Coal Company, as part of its case.
 4383 Plaintiff objects; offer is overruled; defendant excepts.

GEORGE MASON, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is George Mason. I live at Dalzell, Illinois. It is about four miles northwest of Peru. I am acquainted
 4384 ed with Peru and La Salle. I have lived in that vicinity about 28 years. My first business was mining. In recent years I have been farming; for the last 17 years. I have been acquainted with the land lying in Section 21, south of Peru and east of the Peru road, down across the Peru bridge going south, and also the land which lies east and west of the Illinois Central Railroad, claimed by the La Salle County Carbon Coal Company. I have been ac-

quainted with those lands for about 25 years. I have an opinion as to the value of those lands shortly before 1900. I should judge, to the best of my ability, between \$35 and \$40 an acre.

Cross-Examination by Mr. O'Connor.

- 4385 Dalzell is four miles from Peru; say four and a quarter; somewhere along in there. I have seen the lands in question here not over a week ago. I did not go down there for the purpose of seeing them. I saw the lands at that time lying on each side of what is known as the Ducksberry Road; that is from La Salle towards Oglesby and Portland. I saw the land lying on both sides of the road along there. I make it my business to go over there quite frequently. My father-in-law lives right there on the bottoms east of the Vermillion River. I have seen
- 4386 the land lying south of Peru right recently. I saw the lands lying south of Peru some time this spring, on both sides of the road. I saw the lands along in there between
- 4387 1890 up to 1900. I knew the land that Waugh used to farm; I can't tell exactly how many acres of that land were in crop from the year 1890 down to the year 1900; I don't know how many acres were raised of that land from the year 1885 down to 1900. I don't know how many bushels per acre that land yielded during that period, nor the character of the corn. I don't take into considera-
- 4388 tion, in placing my valuation, any of the coal underlying the surface. I don't know what the lands raised that lie south of the Illinois River and east and west of the Illinois Central right of way. I don't know how many acres in that particular piece were under cultivation, nor the character of the crops that grew there.

4389 WALTER D. STRAWN, a witness called by the defendant,
testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Walter D. Strawn. I reside at 72 Chapel street, Ottawa. I am a retired farmer and have lived in Ottawa since the 22nd of last November. I was born in La Salle County but I lived out of it for 18 years. The balance of the time I lived in Ottawa. I have an acquaintance with La Salle and Peru by traveling through there. I know both places. My attention has been called to the lands claimed by the La Salle County Carbon Coal Company south of Peru and east of the road running south from Peru. Also land lying east and west of the
4390 Illinois Central. I have an opinion as to the fair cash market value of that land shortly before 1900, from observation and knowing what the land was selling for. I think it is worth about \$50 an acre.

4391 *Cross-Examination by Mr. O'Connor.*

I looked at those lands especially with a view of ascertaining their quality. I think it was a week ago Sunday and a week before that I was down there. I was down there twice. I went down there to ascertain the condition and the quality of the land. The only way I knew them was by driving along the roads or riding over the Illi-
4392 nois Central. My opinion as to what they were worth in 1900 is derived largely from the conditions of the land as I saw them the other day, and I assume they were in the same condition in 1900 and prior to that time that they are today. I think they were probably in about the same condition. We took a team and went all over the land; Dan McCarthy and myself were down there. We

4393 drove across the middle road down there. We drove
 around at different places. I should say, from the naked
 eye, there would be no way of draining that land. Take
 it up in the main body of that land the corn is principally
 on the east side of it. On the west side it was all grown
 up with weeds; there is some little corn on the west but
 not so good as on the east. I think the corn averaged a
 little better on that further patch than it did on the oth-
 4394 ers. I never owned any bottom lands. If during the
 years from 1893 to 1900 the corn averaged 60 bushels to
 the acre, my value was low, but according to the way I
 know the land was selling and that there was a more
 hazardous condition in these lands down there and no
 improvements on it whatever, my judgment is that that
 land would always be about the same that it is now.
 4395 I didn't make any careful examination of that land prior
 4396 to 1900. I would be surprised to know that it raised
 nine consecutive crops prior to the year 1901 but I would
 not think that I had placed too low a value on it from
 the way that lands were selling. There was plenty of
 land sold before 1900 for \$60 up to say \$85, from 1890 to
 4397 1900. I don't remember any particular piece that sold
 around January, 1900, for as much as \$100 an acre.

ROBERT WARRICK, a witness called by the defendant, tes-
 tified as follows:

Direct Examination by Mr. Chipperfield.

4398 My name is Robert Warrick. I reside in Utica. I am
 a farmer. I have lived in Utica Township over 40 years;
 about five or six miles from Peru and La Salle. I go to
 Peru through La Salle. I am acquainted with the lands
 claimed by the La Salle County Carbon Coal Company
 located south of the Illinois River across from Peru and

east from the Illinois River bridge and also with the lands east and west of the Illinois Central. I have been acquainted with them in a general way for about 32 or 33 years. I have an opinion as to the fair cash market value of those lands shortly before 1900. They were worth \$25 an acre.

Cross-Examination by Mr. O'Connor.

I did not include the coal. I would see these lands every few weeks or month. I saw the lands in June of this year. The land I saw lies on both sides of the dike as you cross the bridge. I have been across there most every year two or three times a year. I know the place where Waugh lived. I was not personally acquainted with him but I know all the land that he farmed. I don't know how much in bushels per acre it raised. I saw the corn growing on it. I should judge corn was repeated there year after year; always was in corn when I saw it. I have traveled over the Illinois Central road from La Salle. I don't know the number of acres lying on the land on the east side of the Illinois Central that was in crop from the year 1885 down to 1900. I only know of the character of the crop raised on it from observation. I wasn't on the ground during any of those years. I didn't go into the field. I don't know the number of acres west of the Central that were under cultivation during those years, nor the yield per acre, nor the yield per acre in bushels, nor the character of the corn. I never farmed any bottom lands myself.

Re-direct Examination by Mr. Chipfield.

I knew some land in the bottoms that was for sale by D. B. Gates at that time. It was situated close to the land in question.

4405 GEORGE SARGEANT, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is George Sargeant. I reside in Deer Park
4406 Township. That is southeast of La Salle. Pretty near
seven miles from La Salle. My business is that of a
farmer. I have been engaged in that all my life. I have
lived in La Salle County 54 years. I am acquainted with
the Illinois Central bridge where it crosses the river. I
am acquainted with that portion of it south of the river.
I know the land claimed by the La Salle County Carbon
Coal Company lying east and west of the Illinois Central
bridge. I know the land east, not west. I have an opin-
ion as to the fair cash market value of that land shortly
before 1900. I should say it wasn't worth over \$30 or \$35
an acre.

4407 *Cross-Examination by Mr. O'Connor.*

I have never farmed any bottom lands. In 1900 I lived
in Deer Park. I drove to La Salle on the road from Jones
along the bluff. I don't know the number of acres actu-
ally in crop on that particular piece. I was not down
in that field of corn. I observed it as I was passing along
4408 the dike there. I saw a stand of corn. I should say that
the corn ran 25 bushels to the acre this year by the looks
of the stalks; 25, possibly 30.

My valuation does not include the coal underlying the
ground.

4409 JOSEPH KINZER, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Joseph Kinzer. I am a farmer. I reside in Utica Township. I live about seven miles from La Salle and Peru. I have lived there about 35 years; have been engaged in farming about 40 years. I know the Illinois Central river bridge where it crosses the river and runs south from La Salle. I know the lands claimed by the La Salle County Carbon Coal Company on the other side of the river. I have an opinion as to the fair cash market value of that land shortly before 1900. In my opinion it was worth about \$25 an acre.

4410 *Cross-Examination by Mr. O'Connor.*

The lands were good for farming, corn farming. I couldn't say how many crops they raised prior to 1900, nor how many crops they lost from 1885 down to 1900. I couldn't tell how many acres were in crop. I don't know whether the corn matured every year or not. I know they had crops there every year, but I couldn't say
4411 for sure as to that. I don't know how many bushels it run per acre. I did not take into consideration the coal underlying the land.

4412 D. H. DUGAN, called as a witness by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is D. H. Dugan. I reside at Chillicothe, Illinois. I am connected with the Sanitary District of Chicago as assistant engineer. I have been with the Dis-

trict about six years; have had 12 years' experience as an engineer. Three years with the Chicago, Milwaukee & St. Paul Railroad Company, and two years with the
 4413 United States Geological Survey in Wisconsin. At various times I was employed by private concerns, and spent several months with Professor Mead of the University of Wisconsin, both in the location of water power sites and for several months was employed by him in connection with the reconstruction of the water works system of Decatur, Illinois. I began with the District about six years ago as instrument man in charge of a party making topographic surveys in the Illinois Valley and I have been promoted from time to time. I am now assistant engineer. I have made a computation of the rainfall data which was introduced and admitted in evidence in this case as to the average totals shown for the different years from 1893 down to date. The totals are: 1893,
 4414 29.22 inches; 1894, 29.71 inches; 1895, 29.34 inches; 1896, 35.58 inches; 1897, 30.18 inches; 1898, 39.21 inches; 1899, 27.53 inches; 1900, 32.18 inches; 1901, 24.95 inches; 1902, 46.32 inches; 1903, 36.55 inches; 1904, 31.31 inches; 1905, 35.86 inches; 1906, 33.3 inches; 1907, 38.79 inches; 1908, 32.11 inches; 1909, 40.06 inches; 1910, 27.36 inches. The computation of rainfall during the planting and growing season for the same years, that is, April, May, June, July, August and September, inclusive, for 1893, 16.83; 1894,
 4416 18.9 inches; 1895, 15.97 inches; 1896, 27.5 inches; 1897, 13.91 inches; 1898, 20.25 inches; 1899, 16.41 inches; 1900, 19.47 inches; 1901, 12.87 inches; 1902, 13.42 inches; 1903, 25.63 inches; 1904, 18.91 inches; 1905, 24.43 inches; 1906, 18.54 inches; 1907, 25.71 inches; 1908, 19.77 inches; 1909, 23.82 inches, and 1910, 19.43 inches. The rainfall for Au-
 4417 gust, 1894, was 1.12; August, 1897, 1.6 inches; July, 1898, 1.95 inches; June, 1899, 2.31 inches; September, 1900, 2.13 inches; July, 1901, 3.09 inches; September, 1902, 5.58

4418 inches; July, 5.22 inches, 1903; September, 1904, 4.04 inches; November, 1905, 2.22 inches; July, 1906, 2.62 inches; September, 1907, 5.16 inches; October, 1907, 1.08 inches; September, 1908, 1.12 inches; January, 1909, 2.12 inches; August, 1910, 3.8 inches. The amount for August, 1893, is .57 inches. The rainfall applies to the area drained by the Illinois River above the City of La Salle. I have made a tabulation or illustration showing a comparison of the precipitations for the periods or period from 1893 to 1901 and from 1902 to 1910.

(The chart of said comparative annual precipitation was marked Exhibits 282, 283.)

I will explain. On the left side of the plat appears the figures 46, 44, 42, 40, 38, 36, 34, 32, 30, 28, 26, 24, 22, 20, 10 and zero. Those figures represent the scale to which the chart is drawn and represent the rainfall in inches. At the left is a vertical green column with the figures 4420 46.32 and the figure 1902 underneath. That column represents the annual rainfall over the watershed of the Illinois River for the year indicated—1902. In the next column appears the figures, 40.06 with the figure 1909; that column represents the annual rainfall above the City of La Salle for the year 1909, drawn to the scale shown at the left of the chart. These figures are based upon the certified rainfall introduced in this case and admitted as evidence in the case. The next column appears the figures 38.79 and 1907; that indicates the annual rainfall above La Salle for the year 1907 drawn to the scale indicated at the left of the chart. So on for the other columns and for the years named, to wit: the years 1906, 4421 1908, 1904 and 1910. The green columns are arranged in their order of greatest magnitude. The column on the left represents the year of greatest rainfall and the column immediately to the right of that is the year of next greatest rainfall; the column to the right of that is the

year of next greatest rainfall and soon down to the lowest rainfall that is represented in the column to the right, 4422 the extreme right of the chart. The green columns indicate the annual rainfall above the City of La Salle for each of the years 1902 to 1910, inclusive. The red columns are arranged in like manner to represent the annual rainfall above the City of La Salle for each of the years from 1893 to 1901, inclusive. Across the plat appears a green line and above it is written the words "average 1902 to 1910, 35.74 inches"; that represents the amount of average annual rainfall above the City of La Salle for the years 1902 to 1910, inclusive, for each year. The red line appearing upon the plat below the green line with the words "average 1893 to 1901, 30.88 inches," that is the average annual amount of rainfall above the City 4423 of La Salle for the years 1893 to 1901, inclusive. From the years 1893 to 1901 the total amount of rain which fell was about 277.9 inches. Between 1902 and 1910, inclusive, the total amount of rain was about 321.6 inches; a total difference of 43.7 inches. In the next chart, No. 283, there is a plat showing the precipitations from April to September, 1893, 1901, 1902 and 1910. That plat is constructed in a similar manner as the one just described, but it is restricted to those periods, limited to the months of April to September of each year. The green column represents the rainfall above the City of La Salle, April to September of each year from 1902 to 1910. The red columns indicate the rainfall above La Salle for each of the years in the months of April to September for the years 1893 to 1901.

Which said comparative annual precipitation charts, marked Exhibits 282 and 283, respectively, are in the words, figures and characters following, to wit:

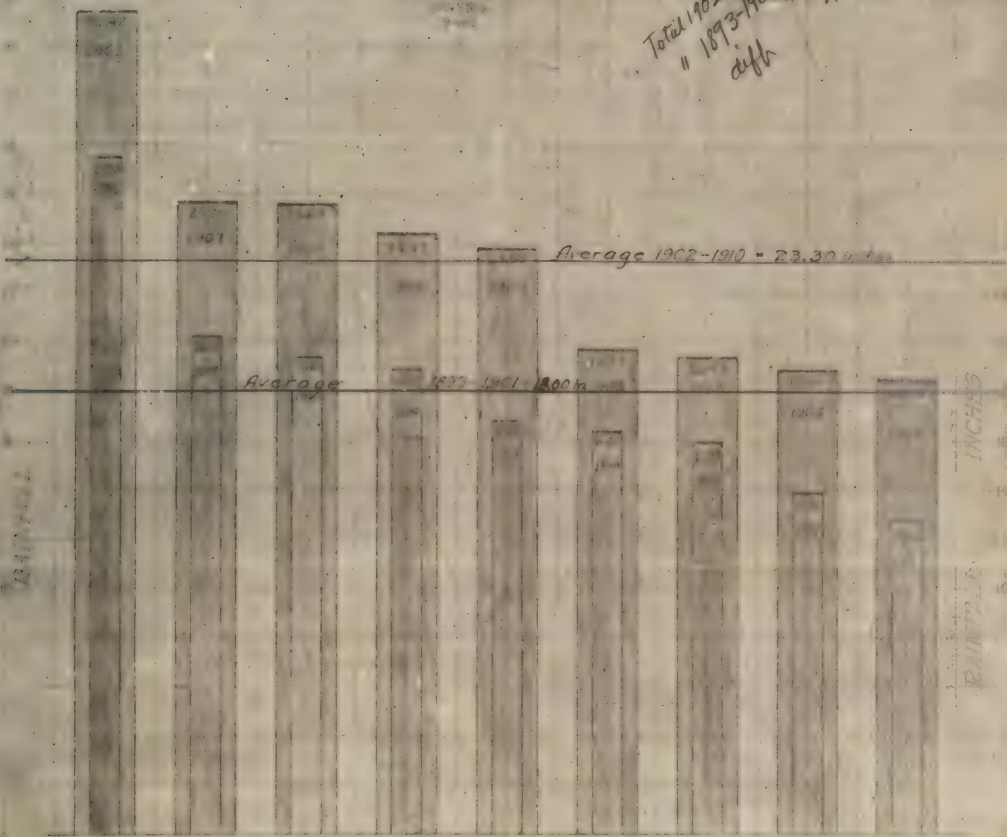
Exh. 282



Exh. 283

APRIL TO SEPTEMBER
1893-1901 & 1902-1910

Total 1902-1910 = 209.66 (sum)
" 1893-1901 = 161.96 (sum)
diff 47.70 inches



Mr. CHIPERFIELD: I desire to offer in evidence Exhibits 282 and 283 on behalf of the defendant.

Mr. O'CONNOR: Plaintiff objects.

The COURT: Objection sustained.

Mr. CHIPERFIELD: Defendant excepts.

4427

Cross-Examination by Mr. O'Connor.

So far as the rainfall computation is concerned, I have
taken all the rainfall during a certain period. I don't
4428 know what the record shows, from memory.

4430 HORACE J. CURTIS, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipperfield.

My name is Horace J. Curtis. I reside in Dowagiac, Michigan. I am a civil engineer and draftsman. I worked for the Illinois Steel Company in their drafting department in Chicago for about a year and a half; about six months with the Link Belt Machinery Company as draftsman and about eight years with John S. Metcalf Company, engineers, in Chicago, drafting, and in August, 1905, I came with the Sanitary District on their surveys in the Illinois Valley and I have been with them most of the time since then with the exception of three and a half years in the Philippine Islands as assistant engineer in the engineering department. I was working for the Philippine Government. I was assistant engineer in the bureau of public works. I am familiar with the making of topographical surveys. While I was working with the Philippine government I did survey work in connection with irrigation projects, locating locks and construction, building construction, bridge construction and office work in connection with the same; designing, and so forth. I was employed by the Sanitary District in the survey on which this map is based, Exhibit 281. On this particular land shown on that map I was recorder. The recorder takes down all the notes that are given to him by the instrument man and makes sketches of the conditions as
4432 he finds them on the land, so as to facilitate the platting of the maps. We just call the notes topographical notes; sometimes they are called field notes. I know that the field notes and the maps in this case, which have been introduced in evidence are correct, of my own personal knowledge, as one who participated in the survey. I have

constructed from those field notes and map a chart showing the relative elevations of the land in question. I have constructed one of tract 3 which is shown here, starting with the Illinois Central, central of the Illinois Central, running across parallel to the north line of the track, about 225 feet south, and running across the Vermillion
4433 River. The second one starts at the road, the east and west road on the bluff there in tract 2 and runs across here to the Illinois River. The third tract, tract 4, starts back here on the bluff and runs across that tract to the river.

Said plats are marked Exhibits 284, 285 and 286.

These plats correctly show the surface of this land at the points that I have indicated. This black line that runs across in an irregular manner on the plat which is marked four, is a line representing the surface of the ground, as it would be if that section were cut with a gigantic knife and shows actually the elevation of the ground across the line. This shows the level of the different pieces or the different parts of the tract clear across the tract. It is based upon the survey which was
4434 made by our party. That is true of the other plats of the other tracts. On the tract marked tract 4, there are also three lines above the irregular line, which are marked "high waters 1892 and 1904" and also "high water, 1883" and also "high water, 1902." They indicate the elevation that the high waters of those years stood over that ground. The line appearing at the right marked "L. W., 1901," that indicates the surface of the low water of the year 1901 in the river opposite the tract. The plat is drawn to a scale, vertical scale of one inch to five feet and a horizontal scale of one inch to 100 feet. The plat is referred to the datum plane of the City of Chicago. Chi-
4435 cago city datum has reference to a plane assumed by engineers in the city and was taken from the low water of

1847 in Lake Michigan. Memphis datum is an imaginary plane referred to the elevation of the water in the Gulf of Mexico. I am not certain whether it was in low water. I think it was a certain distance below the low water. The difference between Chicago city datum and Memphis datum is 587.04 feet. On the cross section of tract No. 3 there appears a line as high water of 1883, high water of 1892, high water of 1904; that indicates the elevations that the high waters of those years stood over this tract. That plat is also drawn to the same scale. On the cross section of tract No. 2 there appears high water 1883, 1892, 1904; that indicates the elevation of water, the high water of those years on that tract. And there also appears low water of 1901; that is the low water of 4436 that year opposite that tract. The distance shown between the low water of 1901 on tract No. 4 and the crest of the bank is about 12.3 feet. The water surfaces are 4437 based upon a profile made during the government survey of the river by Mr. Woermann in 1900 and 1904. I have a certified copy of the profile made of the Woermann survey.

Offered in evidence. Offer rejected.

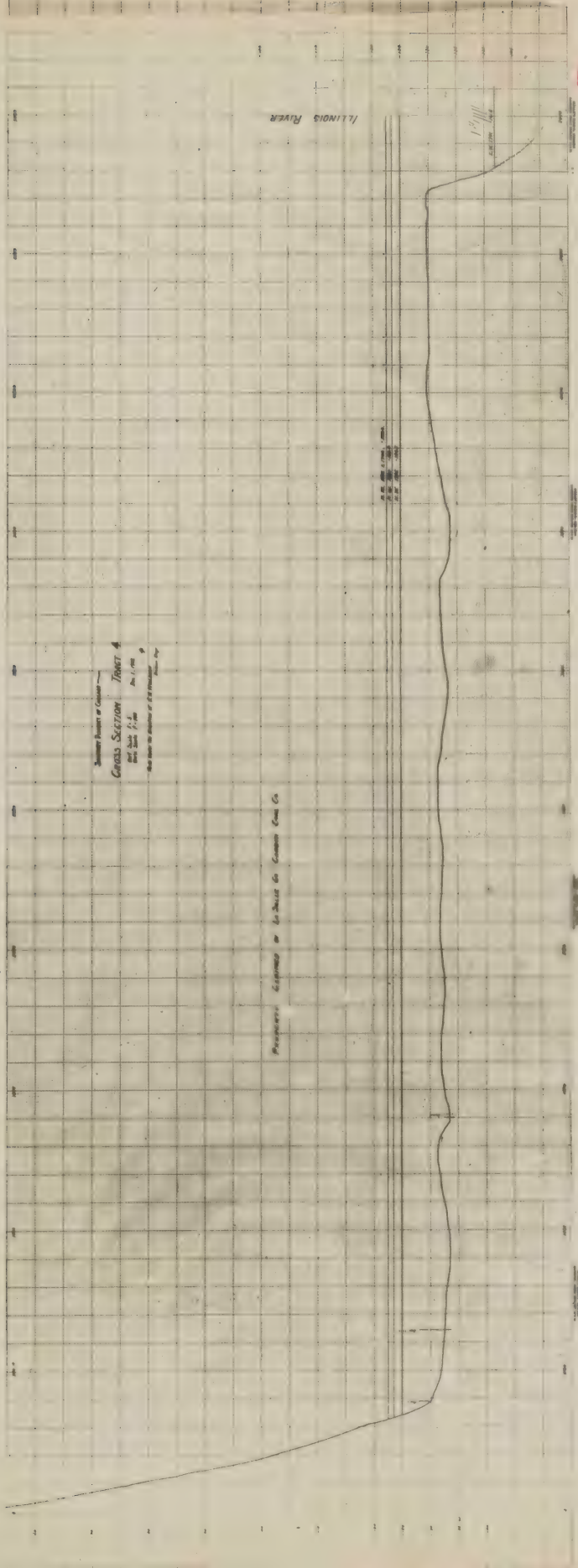
Defendant excepts.

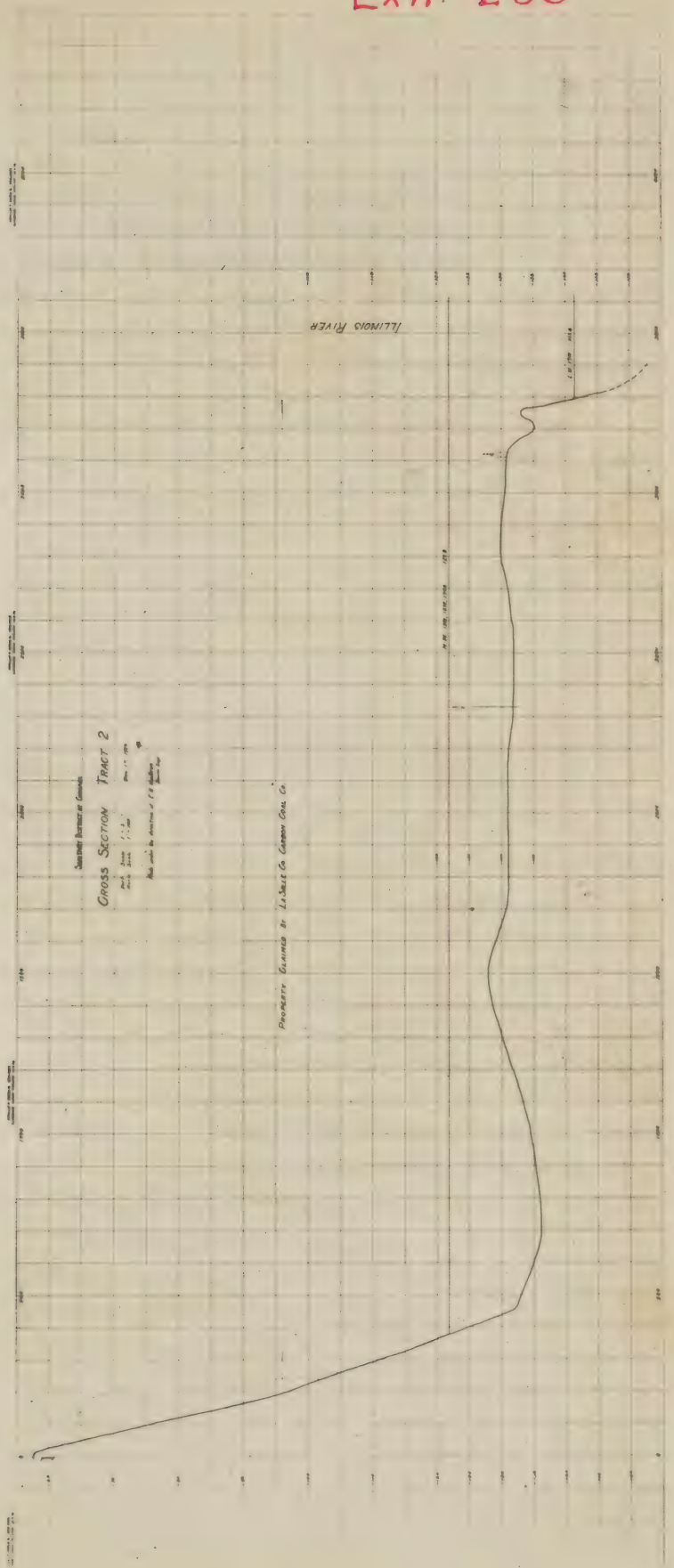
4446 EXHIBIT 284.

4447 EXHIBIT 285.

4448 EXHIBIT 286.

4449 EXHIBIT 287





4451 I have a plat of the water surfaces at Brandon's bridge at Joliet for the months of September and October, 1911, and also the water surface of the Illinois River at La Salle for the year 1911.

(The said documents were marked Exhibits 288 and 289 and are in words, characters and figures following, to-wit):

4453 Across Exhibit 288 is an irregular line above a heavy line, marked September and a lighter line marked October. The irregular line represents the water surface of different days from September to October 1, 1911, as it appears from the guage readings of those days, platted to a scale showing the actual representation of the water, between September 1st and October 31, 1911. It is based upon gauge readings which are in evidence in this case, given at Brandon's bridge, by Albert Lindner. The upper plat, the scale is one inch to a foot, vertical scale
4454 and the horizontal scale is three inches to one month, or one-tenth of an inch to one day. The scale of the lower
4455 plat is the same as the other. The plat depicts the water surface at Lock 15, La Salle, from September 1st to April 31, 1911. It is based upon the gauge readings of the weather bureau at La Salle, admitted in evidence in this case. (Each of the plats offered in evidence by the defendant.)

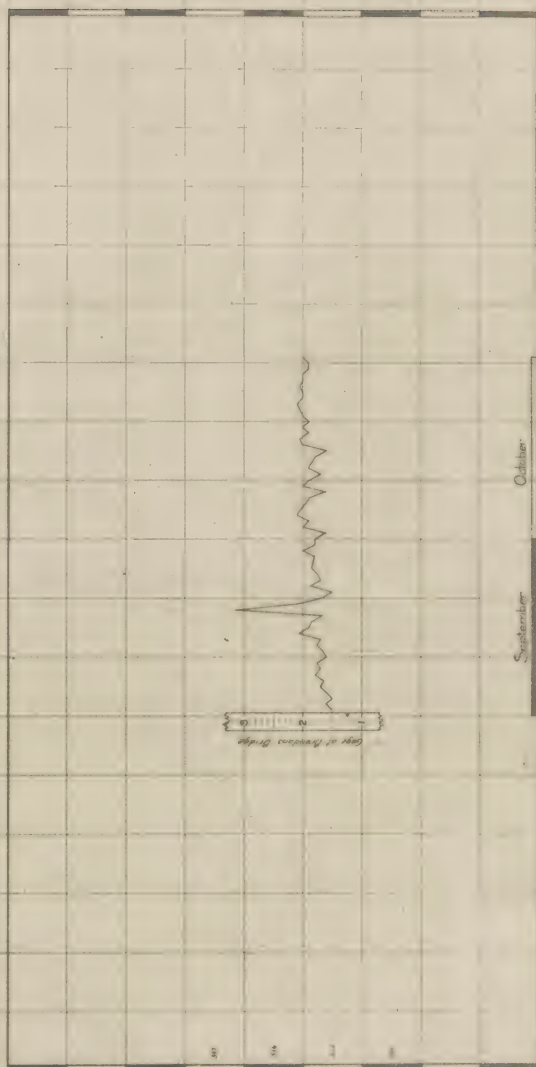
Plaintiff objects; objection sustained; defendant excepts.

Exh. 288

CHART OF WATER SURFACES

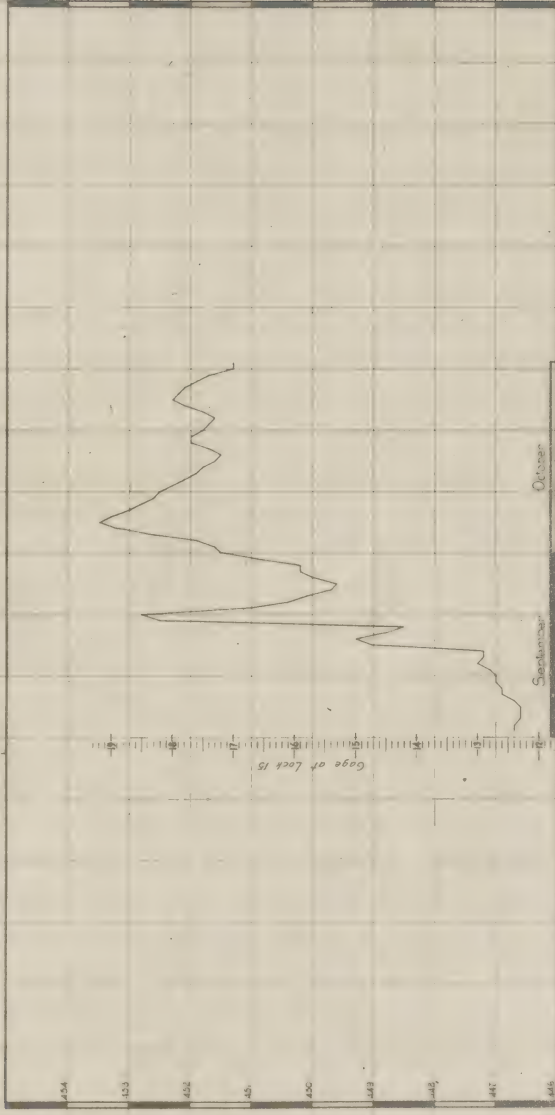
Brandon Bridge - Joliet

for
September and October 1911



Top of Brandon Bridge

G 76
CHART OF WATER SURFACES
for
Lock No. 15 - LaSalle
September and October - 1911



4456 On the tract of land in Section 22 I have a notation as to what was growing on this land when this survey was made in 1906, at which time the different area of crops, timber, weeds or anything in physical characteristics of the land at that time were noted. On tract 2, being in Section 22, there was 79.67 acres of corn; there was 38.17 acres timber; 14.80 acres timber and weeds and 3.48 acres
 4457 brush and weeds. On tract No. 3 there was 73.51 acres of corn and 8.29 acres of timber. On tract 4, being a portion of Section 21 south of the river and east of the slough, there was 297.47 acres of corn, 33.86 acres of weeds, 16.88 acres of meadow, 2.41 acres of timber, 13.55 acres timber and brush, 30.83 acres timber and weeds. In tract 19.53 acres corn, 5 acres weeds, .54 meadow, .71 millet, 15.72 acres timber and weeds. I have aggregated the
 4458 totals of the different physical objects that we found upon the entire tracts. In the four tracts there was in corn 452.18 acres; in weeds, 38.86 acres; in meadow, 17.22 acres; in millet, .71 acres; timber, 48.86; timber and brush, 13.55 and timber and weeds, 61.35 acres; brush, 3.48 acres. Tract No. 3, the portion crossed by the C., B. & Q., is 81.80 acres; tract No. 2, the portion west of the Illinois Central and east of the Shippingsport bridge, 136.12 acres. Tract 4, the portion of Section 21, south of the Illinois River, and east of the bayou is 376.70 acres; tract 5, the northeast quarter of Section 21, south of Huse Lake and east of the Illinois River is 41.50 acres. The aggregate of all those figures is 636.21 acres. The water surface in McCormick's slough during the survey in 1906 was secured. The elevation of the water surface at that time was minus 137.8 Chicago datum, taken November 3, 1906. In the gauge reading at Lock 15, on that date, shown by the evidence of Mr. Peterson, of the weather bureau, it is given as 11.8 feet. Taking the zero
 4460 of the gauge and computing the water surface of the

river at that date, you would make an elevation of 446.1 Memphis datum, and subtract that from 587.04, which is the difference between Memphis and Chicago datum of 100, minus 141.4. The difference between the surface of the Illinois River and the water surface of McCormick's slough, from this computation shows as 3.14 feet. The elevation of the bottom of McCormick's slough, referred to Chicago datum, is minus 137.5. The Illinois River was lower on November 3, 1906, than the bottom of McCormick's slough by 3.44 feet. The river on that same day 4461 was 2.14 feet lower than the surface of the pond. The water surface of the pond on the southwest portion of tract No. 2 south of the Illinois River. The difference between the elevation of the bottom of the slough in tract No. 3, being east of the Illinois Central right of way, and the surface of the Illinois River, at the time of the survey, was 2.84 feet. The difference between the highest and the lowest point of cultivation as found by our survey, 4462 was 11.5 feet. The lowest point of land in tract No. 3, outside of the Vermillion River, is found along the slough. The lowest point of cultivated land in tract 2 is minus 137. The lowest point I suppose is in the bottom of the river. The highest point is back on the bluff just north of the road; a difference between this highest point and lowest point on the bank of 32 feet. The highest point of tract 5 is the southeast corner of the section and the lowest point of cultivated area minus—42 feet 4463 difference. The difference between the highest and lowest part of tract 5, of the cultivated area is $5\frac{1}{2}$ feet. The average elevation on the piece of land east of the C., B. & 4464 Q. is 130. Tract 3 is slightly higher than tract 2. Tract 3 is higher than tract 4. Tract 3 is higher than tract 5. Tract 3 is about five feet above the elevation of the bank of the river. The elevation of Water street is minus 120. That would be 15 feet above this bank (indicating).

4465

Cross-Examination by Mr. O'Connor.

The survey in 1906 was made in the latter part of October and fore part of November. When I compare highest and lowest points of piece of land, I take the lowest point outside of the river, the average bank of the river. A man looking at the ground down there, the ground looks to be about level. If you are looking for a difference of elevation, though, you can see it readily enough.

4466 D. B. Fox, a witness called by the defendant, testified as follows:

Direct Examination by Mr. Chipfield.

My name is D. B. Fox. I reside in Peru. I am acquainted with the land in Section 21 south of the Illinois River and east of the Peru road. I farmed that land several years ago. In 1880 I paid half of a thousand dollars a year.

4468 The COURT: I will let you show the extent of his acquaintance with it in general, but I don't think I can permit you to show particular dealings with it prior to 1885.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

I farmed this land for seven years. I did not have it after 1895. I commenced with it in 1887 under Waugh.
4469 I had it for seven years. I commenced with it in 1887. I mean 1877.

Q. I will ask you what rental you paid for this land in the year 1884?

Plaintiff objects; objection sustained; defendant excepts.

Q. During the time you were there did you raise any crops on this land?

Plaintiff objects; objection sustained; defendant excepts.

4470 I knew at the time when Waugh was farming this land.
 4472 I knew from hearsay from the Waugh family how much rent they paid for the land. I have been acquainted with this land a good many years; I should say for 40 years. I am acquainted with the land west of the Illinois Central track and also lying east and west of the C., B. & Q. I have known them for a long time. I have an opinion as to what was the fair cash market value of that land shortly before January, 1900. I think the value of that land was \$40 an acre, \$40.

4473 *Cross-Examination by Mr. O'Connor.*

I was pretty well acquainted with what that land did from 1885 to 1900, during the time that Waugh had it. I have no feeling in this case. I think most of this land was in crop during those years. I think betwixt two and three hundred acres below the Illinois River there, west, down to the Peru road, running near the pond and all down through the road, betwixt two and three hundred
 4474 acres of farm land. In the year 1895, down to the year 1900, there was about 40 acres of that land that was cleaned off. None of the land has been grubbed out across the river. I don't think there was any of them crops lost
 4475 down to 1900, except the year 1892. I don't know how much corn was raised there in 1899, nor what kind of corn it was, nor how much it ran to the acre. I don't think the yield there exceeded 40 to 50 bushels an acre. I
 4476 think that was a fair average. It would not raise as much corn per acre as uplands, not with me. The land is productive, but not as productive as up-hill land; never was considered as productive. I don't think that four crops in bottom lands would be as good as five crops on
 4477 uplands, nothing like that. I have known very few acres of this land to grow more than 40 or 50 bushels to an acre, very few. I think the yield this year wouldn't be over

25 bushels to the acre. I should say that last year was
 4478 about the same thing. I haven't examined the land this
 year. I think the corn on that ground last year and this
 4479 year would grade. That is my judgment of it. I exam-
 4480 ined this land from the bluff last week. The time I
 placed my valuation on this land I took into considera-
 tion the coal underlying the surface. I included the coal,
 4481 whatever rights they have to it. The way they are buy-
 ing this coal it is worth about \$15 an acre. I think it was
 worth \$15 an acre in 1900. I allowed about \$25 for the
 land and \$15 for the coal. I saw it in 1900. I think the
 surface was worth about \$25 an acre and the coal worth
 \$15 an acre.

4482 W. K. HOAGLUND, a witness called by the defendant, tes-
 tified as follows:

Direct Examination by Mr. Chipperfield.

My name is W. K. Hoaglund. I live in Peru, Illinois.
 My business has been manufacturing agricultural imple-
 ments. I have lived in Peru since 1882. Before that
 time I lived in Council Bluffs, Iowa. I am acquainted
 with the land claimed by the La Salle County Carbon
 Coal Company, on Section 21 and across the river, and
 the land which lies west of the Illinois Central and east
 and west of the C., B. & Q. I have an opinion as to the
 fair cash market value of that land shortly before 1900.
 I think it was worth about \$50 an acre.

4483 *Cross-Examination by Mr. O'Connor.*

I am 76 years old. I am around considerable. In a
 general way I have been familiar with the lands 10 years,
 with the lands that Waugh used to farm. I have not been
 4484 down to make any particular inspection of it. I am

down in the river bottoms almost daily, surely once a
 week. Just walk around there. I have no particular
 knowledge as to how many acres were raised from 1890
 4485 to 1900. In making my valuation I included the coal. I
 would put a valuation on the coal of from \$30 to \$35,
 and a valuation on the surface of the land at about \$15
 4486 to \$20. I think that is a good fair price for the year
 1900. I think maybe it was worth more to a man engaged
 in mining. I am talking of the fair cash market value.
 The valuation also applies to the land that lies south and
 west of the river. I saw that land a short time ago. I
 seen it perhaps two or three or four times a year. Some
 of it is good corn raising land. I don't know how much
 of it. I don't know the acreage planted to corn at any
 4487 time. The uplands in 1900, good corn land, was worth
 4488 from \$75 to \$150. I don't think that four crops on the
 bottoms is as good as five crops on the upland and I
 don't think eight crops from the bottom lands would
 4489 equal ten crops on the uplands. If the crops were as
 good for a term of years on the bottoms as on the up-
 land, I would not place the valuation the same, because
 of the risk. Looking ahead you wouldn't see, you don't
 4490 know anything about it. It is hard for me to assume
 that this land, from 1885 to the year 1900, produced crops
 that ran in corn from 60 to 80 bushels an acre and the
 only year that the crop was lost was the flood year of
 4491 1892, because I lived there and I don't think that is a
 4492 fact. I did not work the land. I would not swear it was
 not the fact. I get my idea of values there on the gen-
 eral proposition there among the farms and the people
 there that they would rely on two crops sure and pretty
 near three out of five. Now, that is the way I base my
 4493 opinion of its value. I don't know the bushels raised
 and I don't know the years. I don't know how many
 crops it actually raised.

Re-direct Examination by Mr. Chipperfield.

I don't know of a single farm sold as early as 1900 for \$150 an acre.

4494 EXHIBIT 290.

Defendant rests.

Exh. 290

Exh. 290

PÉREZ LA SALLE

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4495 HOWARD S. HAZEN, called as a witness in rebuttal by the plaintiff, testifies as follows:

Direct Examination by Mr. O'Connor.

My name is Howard S. Hazen. I have already testified in this case. I am secretary and general manager of the La Salle County Carbon Coal Company. In the year 1909 I made a commercial report to the R. G. Dunn Company, Chicago, and in that report I placed a valuation upon the various lands we own generally. I included the
4496 land involved in this suit. I placed a valuation of \$100.

Q. In making up that valuation what did you figure in it, Mr. Hazen?

Objected to by the defendant.

The COURT: It is in the nature of an admission and I suppose both sides have a right to give their version of it. I think I will let him answer this question.

A. The basis of valuation included our claim against the Sanitary District for damages.

4498 *Cross-Examination by Mr. Chipperfield.*

This is not an after-thought. That is a forethought. I did put in the coal rights in the same statement. I didn't put them in at any value. I did not put in 21,000 acres of coal rights at more than \$1,000,000. I did not
4500 take any copy of the statement. I don't remember what the entire assets of the company were figured at. I was not asked the question as to the value of this property when I was testifying on the stand. I did not attempt to testify to it at that time.

(Statement to R. G. Dunn Company read to the witness.)

Q. Did you make that statement? A. I presume I did. My signature is there.

4504 Q. I will ask you whether when you got done with the report didn't you add this as a postscript:

"All bills of every kind are audited and paid about the 20th of each month. No indebtedness of any kind after that date. This information is for your use only and not to be given to the public. We don't ask much credit and feel like Vanderbilt on a certain occasion."

Q. Did you write that? A. I imagine I did.

The number of shares of our company is 10,000.

4505 Q. Now, did you state at that time in this statement that you were relying on recovery from the Sanitary District? A. No, sir.

Q. How much did you have in mind, \$200,000, that you were suing for? A. I told you in 1888 what I had in mind.

4506 Q. You stated to me in 1898? A. During the Braun trial, when I said this case would never be settled out of court.

Q. Didn't you say you would be glad to settle for the \$20 an acre that was claimed in the case? A. I told you we would never settle this case outside of court for less than that.

Q. Didn't you say, Mr. Hazen, you would be glad to settle it? A. No.

4507 Q. You say you included your claim against the Sanitary District? A. Why, I expect to get \$100 an acre out of it before we get through with it.

Q. You are doomed to a big disappointment? A. I am willing to take my chances.

Mr. O'CONOR: Well, we will take our chance.

Mr. CHIPERFIELD: Q. Now, how much did you figure the coal rights were worth when you made that statement?

A. I didn't figure it.

Q. I ask you now how much you figured it, if you were

making a mental reservation, how much you figured the coal rights were worth? A. I didn't give any value on the coal rights whatever.

Q. I am asking you how much you figured the coal rights were worth at that time? A. I can't tell you.

Q. You won't answer? A. No, sir.

Mr. CHIPERFIELD: That is all, Mr. Hazen.

4509 Mr. O'CONOR: In the deed from Rachel L. Neustadt and Morris Neustadt, to the Illinois Valley Coal Company, which was marked Exhibit 8, there is the following reservation:

The party of the first part reserves the right to quarry stone and remove the same from said track of land by team or otherwise, also the right to lay a track from the Illinois Central Railroad track to the quarry for the removal of said stone.

These reservations are made for the benefit of George W. Snow, Rachael L. Neustadt and Morris Neustadt, her husband, and Emiline E. Snow, wife of G. G. Snow, and shall continue only during their life time.

The deed was made in the year 1870 and relates to some quarry rock that is not down on the bottom.

The above and foregoing is all of the evidence offered and introduced by either party to said cause upon the trial thereof.

And thereupon the defendant, by its attorney, moves the court in writing as follows:

4512 Whereupon the defendant, by its counsel, moved the court to exclude from the consideration of the jury Exhibit 1 for the reason that the same does not tend to prove the plaintiff's cause of action; that the said exhibit creates a variance between the allegations of the declaration and the proof offered; for the further reason that there is no proper foundation appearing in this record for the admission of said exhibit; because the same does

not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because the same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury Exhibit 3 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged; that said exhibit does not purport to contain description
4513 of the premises, but refers to other deeds therein named which have not been properly or sufficiently identified as connected with the premises involved in this proceeding.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel then and there excepted.

The defendant, by its counsel moved to exclude from the consideration of the jury Exhibit 4 for the reason it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plain-

tiff; because there is no sufficient proof of the execution of the same; because the same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury Exhibit 5 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is
4514 no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury Exhibit 6 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury Exhibit 7 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no
 4515 proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury Exhibit 8 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the declaration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury Exhibit 9 for the reason that it does not tend to prove plaintiff's cause of action; that it creates a variance between the allegations of the dec-
 4516 laration and the proof offered; because there is no proper foundation appearing in this record for the admission of said exhibit; because it does not relate to the

premises described in plaintiff's declaration; because the same does not tend to establish ownership in the plaintiff; because there is no sufficient proof of the execution of the same; because same is not properly acknowledged.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury the testimony of each and every witness upon the part of the plaintiff with reference to the overflow of plaintiff's premises, or to the injury of any crop, or of the condition of any crop, or of the value of any crop, or of the use to which plaintiff might have put such premises since the 17th day of January, 1900. The theory on which this motion is made is that the cause of action of the plaintiff became completed upon putting into operation the permanent use of the improvement authorized by the statute.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, then and there moved to exclude from the consideration of the jury the testimony of each and every witness upon the part of the plaintiff with reference to the overflow of the plaintiff's premises, or to the injury of any crop, or of the condition of any crop, or of the value of any crop, or of the use to which plaintiff might have put such premises since the first day of July, 1902. The theory upon which this motion is made is that prior to the 1st day of July, 1902, the operation of the District was such that the effect of the use of the improvement was plainly perceptible.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury the testimony of every witness upon the part of the plaintiff with reference to the overflow of plaintiff's premises, or to the injury of any crop, or of the condition of any crop, or of the value of any crop, or of the use to which the plaintiff might have put such premises since the 14th day of January, 1905. The theory on which this motion is made is that the cause of action at that time became complete and that if there is a recovery by the plaintiff it must be upon those causes of action which had accrued and those injuries which had been done prior to the date of the issuance of the summons in this case.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, then and there moved to strike out and exclude from the consideration of the jury any and all evidence with reference to all overflow of
4518 the land in controversy in this case, for the reason that it is not shown by the evidence upon the part of the plaintiff what part, if any, of this overflow the defendant in this case is responsible for, but puts the burden of proof upon the defendant in this case to show what the quantity of overflow was and to determine where the responsibility of such overflow rested.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the years 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911 and 1912.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1900.

Which motion the court overruled; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1901.

4519 Which motion the court overruled; to which ruling of the court the defendant, by his counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1902.

Which motion the court overruled; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1903.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moves to exclude all of the evidence of each and every witness with reference to

injury to any crops upon the premises in question for the year 1904.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moves to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1905.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to 4520 injury to any crops upon the premises in question for the year 1906.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1907.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1908.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of

the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1909.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1910.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

4521 The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1911.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude all of the evidence of each and every witness with reference to injury to any crops upon the premises in question for the year 1912.

Which motion the court overruled; to which ruling the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury all of the testimony in reference to the quality of crops raised upon the lands in controversy at any time either prior to or subsequent to the filing of the declaration in this suit, for the reason that the same is incompetent, irrelevant and immaterial

and does not tend to establish any of the issues in this case.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury all of the following described premises, the North half of the Northwest quarter of Section 21, Township 33 North, range 1 east of the 3rd Principal Meridian, lying south of the Illinois and east of the bayou, as the same appears upon Exhibit 13.

4522 Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of W. A. Means upon the question of the value of the premises described in the plaintiff's declaration for the following reasons?

1st. That no sufficient foundation has been laid for the testimony of said witness, and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintances with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes without reference to the real or actual market value.

5th. That the said witness did not include in the esti-

mation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

4523 6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to value said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That said witness in the expression of the opinion as to injury of premises involved herein was required
4524 to take into consideration all overflow of premises de-

scribed in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit; but were permitted to assume that all the injury which he claims occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Joseph Greiner upon the question of the value of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness, and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereof.

3rd. That said witness did not in his expression of opinion, state or attempt to state, the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the
4525 said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the

fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case, for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

4526 10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to this

suit; but were permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Henry Ream upon the question of the value of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for
4527 the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion, state or attempt to state, the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purpose, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did not exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case, for the purpose of attempting to prove title, but place a value

on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use
4528 and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit; but were permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Henry Myer 4529 upon the question of value of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness, and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis, that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a 4530 value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as

to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to
4531 this suit but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Charles Mudge upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness, and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion, state or attempt to state the fair market value of the premises involved.

4th. That in the expression of said opinion said witness adopted an improper basis; that is to say, that said witness has expressed an opinion as to the values of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was 4532 contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury or counsel; but was permitted and required to state an opinion upon the basis of matter which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of filing of 4533 the declaration herein, to-wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit, but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Ed Pyka upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony

has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereof.

3rd. That said witness did not in his expression of opinion state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness 4534 has adopted an improper basis; that is to say, that said witness had expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the

value thereof, without disclosing the basis therefor to the court, the jury or counsel; but was permitted and required to state an opinion upon the basis of matters 4535 which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Charles Castendyck upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qual- 4536 ify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion, state or attempt to state, the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what said lands would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which has been introduced by the plaintiff in this case, for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use 4537 and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters

which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration without reference as to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Otto Halm upon the question of values of the premises described in
4538 the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness, and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that

said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case, for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or 4539 reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing

of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration without reference as to whether or not such overflow was caused by act under the direction and control of the defendant to this
4540 suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of George W. Braun upon the question of values of the premises described in the plaintiff's declaration for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereof.

3rd. That said witness did not in his expression of opinion state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness had expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, with reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was 4541 contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing 4542 of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the

opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration, without reference as to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Fred A. Mudge, upon the question of values of the premises described in the plaintiff's declaration, for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion, state or attempt to state the fair market value
4543 of the premises involved.

4th. That in the expression of such opinion said witness had adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values, said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to

this suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of M. J. Charley, upon the question of values of the premises described in the plaintiff's declaration, for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

4545 2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion, state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper bases; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a

value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint
4546 of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to value given by him merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury, or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to-wit, the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in plaintiff's declaration, without reference as to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling

of the court the defendant, by its counsel then and
4547 there duly excepted.

The defendant, by its counsel, moved to exclude from the testimony in this case the testimony of Abraham Voorhees upon the question of values of the premises described in the plaintiff's declaration, for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in the vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not, in his expression of opinion, state or attempt to state the fair market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case, for the purpose
4548 of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations as therein contained.

7th. That said witness refused to consider the fair

cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion as to values given by him, merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, the jury or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration, without reference to whether or not such overflow was caused by acts under
4549 the direction and control of the defendant to this suit; but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from

the testimony in this case the testimony of Charles Dooley upon the question of values of the premises described in the plaintiff's declaration, for the following reasons:

1st. That no sufficient foundation has been laid for the testimony of said witness, and the expression of an opinion as to the fair cash market value.

2nd. That said witness in the giving of said testimony has shown no such acquaintance with the premises and values of real estate in that vicinity as to qualify him for the expression of an opinion thereon.

3rd. That said witness did not in his expression of opinion state or attempt to state, the fair cash market value of the premises involved.

4th. That in the expression of such opinion said witness has adopted an improper basis; that is to say, that said witness has expressed an opinion as to the value of said premises merely from the standpoint of what the said land would produce for agricultural purposes, without reference to its real or actual market value.

4550 5th. That the said witness did not include in the estimation of the value of said premises the coal that was contained therein, but did exclude the same from his opinion and refused to consider the value thereof.

6th. That the said witness did not exclude from the fair cash market value of said land the various exceptions and reservations contained in the said deeds which have been introduced by the plaintiff in this case for the purpose of attempting to prove title, but did place a value on said premises without regard to said exceptions or reservations therein contained.

7th. That said witness refused to consider the fair cash market value of said premises from the standpoint of the highest and best use that could be made thereof.

8th. That said witness in the expression of opinion

as to values given by him, merely took into consideration the value of said premises from the standpoint of the use and adaptability of said premises for the purpose of raising corn.

9th. That in the expression of said opinion as to values said witness was permitted to take into consideration everything which he knew about said premises until the date of the giving of said testimony with reference to the value thereof, without disclosing the basis therefor to the court, jury or counsel; but was permitted and required to state an opinion upon the basis of matters which were known only to himself and not disclosed upon this hearing.

10th. That said witness in the expression of an opinion was permitted to take into consideration the condition of said premises subsequent to the date of the filing of the declaration herein, to wit: the 14th day of January, 1905, and up to and including the giving of his testimony.

11th. That the said witness in the expression of the opinion as to injury of premises involved herein was required to take into consideration all overflow of premises described in the plaintiff's declaration without reference to whether or not such overflow was caused by acts under the direction and control of the defendant to this suit, but was permitted to assume that all the injury which he claims had occurred to said premises was caused by the act of the defendant herein.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved the court to exclude from the consideration of the jury all evidence with reference to the construction of the Ogden dam or ditch, or other improvements therewith connected, includ-

ing the spillway on the theory that the evidence in this case shows that the construction thereof was completed before the year 1893 and that any cause of action thereby accruing would be barred by the statute of limitations and that the evidence shows the same to be and constitute an independent and separate work.

Which objection the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved to exclude from the consideration of the jury the testimony of each of 4552 said witnesses, and also to exclude from the consideration of the jury plat 13, and all the deeds that have been offered in evidence, for the reason that the same and each of the same tend to create a variance between the allegations of the declaration and the proof offered in this case; that there is not excluded from the descriptions contained in the declaration in this case the right of way of the Illinois Central Railroad or the C., B. & Q. Railroad, but that the said declaration alleges ownership of the entire premises without reference to said rights of way.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The defendant, by its counsel, moved the court to exclude the deposition of E. L. Cooley for the reason that E. L. Cooley was called in person by the plaintiff and gave testimony in this cause upon the hearing of the case.

Which motion the court overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

4553 And thereupon the defendant, by its attorney, moved the court in writing as follows:

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.
October Term, A. D. 1912.

La Salle County Carbon Coal Co. }
vs. } Gen. No.
The Sanitary District of Chicago. } Term No.

Now comes the defendant, The Sanitary District of Chicago, at the conclusion of the taking of the evidence from the trial of the above entitled cause, and moves the court, under the first count of the declaration herein, to instruct the jury to return a verdict finding the defendant not guilty, and in connection herewith submits a form of instruction to be given to the jury.

THE SANITARY DISTRICT OF CHICAGO,

By B. M. CHIPERFIELD,

Its Attorney.

And the defendant, by its attorney, presented to and asked the court to read and give to the jury the following written instruction:

The jury are instructed that under the law and the evidence it will be your duty, under the first count of the
4554 declaration, to return a verdict finding the defendant not guilty.

Which said motion the court then and there overruled and denied; to which ruling of the court in overruling and denying said motion the defendant, by its counsel, then and there duly excepted.

And the court then and there refused to read and give to the jury said instruction, and marked the same "Refused."

To which ruling and decision of the court in refusing to read and give to the jury said written instruction, and in marking the same "Refused," the defendant, by its attorney, then and there excepted.

And thereupon the defendant, by its attorney, moved the court in writing as follows:

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.

October Term, A. D. 1912.

La Salle County Carbon Coal Co. }
 } vs. Gen. No.
The Sanitary District of Chicago. } Term No.

Now comes the defendant, The Sanitary District of Chicago, at the conclusion of the taking of the evidence from the trial of the above entitled cause, and moves the court, under the second count of the declaration herein, to instruct the jury to return a verdict finding the defendant not guilty, and in connection herewith submits
4555 a form of instruction to be given to the jury.

THE SANITARY DISTRICT OF CHICAGO,

By B. M. CHIPERFIELD,

Its Attorney.

And the defendant, by its attorney, presented to and asked the court to read and give to the jury the following written instruction:

“The jury are instructed that under the law and the evidence it will be your duty, under the second count of the declaration, to return a verdict finding the defendant not guilty.”

Which motion the court then and there overruled and denied; to which ruling of the court in overruling and denying said motion the defendant, by its attorney, then and there duly excepted.

And the court then and there refused to read and give

to the jury said instruction, and marked the same "Refused."

To which ruling and decision of the court in refusing to read and give to the jury said written instruction, and in marking the same "Refused," the defendant, by its attorney, then and there excepted.

And thereupon the defendant, by its attorney, moved the court in writing as follows:

STATE OF ILLINOIS,)
4556 COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.
October Term, A. D. 1912.

La Salle County Carbon Coal Co. }
 vs. } Gen. No.
The Sanitary District of Chicago. } Term No.

Now comes the defendant, The Sanitary District of Chicago, at the conclusion of the taking of the evidence from the trial of the above entitled cause, and moves the court, under the third count of the declaration herein, to instruct the jury to return a verdict finding the defendant not guilty, and in connection therewith submits a form of instruction to be given to the jury.

THE SANITARY DISTRICT OF CHICAGO,
By B. M. CHIPERFIELD,

Its Attorney.

And the defendant, by its attorney, presented to and asked the court to read and give to the jury the following written instruction:

"The jury are instructed that under the law and the evidence it will be your duty, under the third count of the declaration, to return a verdict finding the defendant not guilty."

Which motion the court then and there overruled and

4557 denied; to which ruling of the court in overruling and denying said motion the defendant, by its attorney, then and there excepted.

And the court then and there refused to read and give to the jury said instruction, and marked the same "Refused."

To which ruling and decision of the court in refusing to read and give to the jury said written instruction, and in marking the same "Refused," the defendant, by its attorney, then and there excepted.

And thereupon the defendant, by its attorney, moved the court in writing as follows:

STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT OF LA SALLE COUNTY.

October Term, A. D. 1912.

La Salle County Carbon Coal Co. }
 vs. } Gen. No.
The Sanitary District of Chicago. } Term No.

Now comes the defendant, The Sanitary District of Chicago, at the conclusion of the taking of the evidence on the trial of the above entitled cause, and moves the court to instruct the jury to find the defendant not guilty, and in connection herewith submits a form of instruction to be given to the jury.

THE SANITARY DISTRICT OF CHICAGO,

By B. M. CHIPERFIELD,

Its Attorney.

And the defendant, by its attorney, presented to and asked the court to read and give to the jury the following written instruction:

4558 "The jury are instructed that under the law and the

evidence it will be your duty to return a verdict finding the defendant not guilty.”

Which motion the court then and there overruled and denied; to which ruling of the court in overruling and denying said motion the defendant, by its attorney, then and there duly excepted.

And the court then and there refused to read and give to the jury said instruction, and marked the same “Refused.”

To which ruling and decision of the court in refusing to read and give to the jury said written instruction, and in marking the same “Refused,” the defendant, by its attorney, then and there excepted.

4559-4600 Argument of Mr. Butters.

4601-4685 Argument of Mr. Chipfield.

4686 Extract from argument of Mr. O’Conor.

“I am not going to try to kiss a verdict from you, gentlemen. I am not going to try and love one away
4687 from you. I don’t believe there is anybody either here or elsewhere that can kiss this case out of court, that can love it out of court. * * *

When a man stands up here before this jury and seeks to point to the fact that this case is being tried for the recovery of \$200,000, he knows better, and he is simply trying to put the plaintiff in a false light upon false
4688 facts. * * *

Why it appears in this case that counsel for defendant represents the Marquette Coal Company. Can you imagine him raising his voice in this court room for a fair trial upon any issue here involving the Marquette Coal Company? * * *

4689 Now, I don’t believe that when this case is over there is going to be any whispering on the streets of Ottawa, La Salle or Peru, ‘Well, if it was a farmer it would have been different; if it was not a coal company they

would have got what they were entitled to; they would have given them what the law and the evidence would sustain. But that man from Canton showed to the jury that some of the stockholders did not live in the State of Illinois and he prejudiced the jury against the rights of the plaintiff. He further told the jury that it was a coal company,' as though it hurt his throat when he was telling it to you, although he has clients that are in the coal business, that are coal companies, and then have people say that if it was not for these facts, if it was not for those circumstances and these tactics, this plaintiff would have received a fair trial. * * *

4692 The issue is plain. It is clear cut and we want you to accept it. If you believe in the case, as we present it to you, find with us, and give us what we ask for. If you believe in the case as presented here by this defend-
4693 ant, you find for the defendant and don't give us a nickel. Don't give us a nickel. Don't mess this case up. If you find for us, give us what we want, if you believe us. If you find a verdict of not guilty, wait and learn then what some people think about it."

Mr. CHIPERFIELD: I object to such a statement, if your honor please.

The COURT: I sustain the objection. * * *

4697 Mr. O'CONOR: I am never ashamed of any case, gentlemen, where the defendant has to cover two or three states to bring carloads of witnesses, to go from the place where the thing actually happened to get them. I am never afraid of that kind of a case and never have to apologize for it. I might remark generally that when you go to the asylum at Bartonville, to prove the market value of farm land as a gardening proposition, I say, I have the right to say, why don't you get the gardeners at Peru, the men who knew the land? * * *

4703 I knew that they would alibi this defense on every

proposition they could and I knew they would keep their own closet shut and keep its secrets from the jury. I knew it then and I knew when I came to close this case I was going to put it to you as fair men, that when counsel stands here and talks about fair play, when counsel stands here and talks about a fair deal, I say where are their records? * * *

4705 They take photographs of streams, because when you photograph a stream there isn't anybody that can take the photograph and say whether it is a foot deep or twenty feet. He said he couldn't produce the witnesses. I know he couldn't. They were forced to use photographs. You were forced to surveys. You were forced to pictures because there wasn't anybody that could come in and say what the measurements were, the depth and the width, without blowing these photographs and pictures into a million pieces. * * *

4706 Why did he resort to a photograph of the Desplaines River? Draw your own conclusions. It is an index to this defense and shows its general character and you will see why he didn't produce the living witnesses, because they wouldn't have been alive when they left the stand and they knew that, too. * * *

4707 Do you remember DeGroot here, who testified and who laughed on the stand like a laughing hyena; one of those smart witnesses; you remember him. He first said he didn't know what papa was doing, although he was living with papa; that he didn't know that papa was working for the Sanitary District, although he was living with papa. That is what he first said, but he was finally forced to admit that papa was taking gauge readings at the bridge at Peru. * * *

4711 Because Captain Cox, coming around the bend, "steamboat Bill," yesterday morning the last question I asked him, "Did it increase the rise of the river?" Answer: "It did not." * * *

4715 * * * We took plain men. We took men who lived there. They didn't. They couldn't get them. The only men they could produce they didn't produce. They didn't produce men in their employ at the City of Peru and I ask you why. * * *

4723 * * * I am amazed because they have brought in so much deception. I am amazed because they have kept their own records so secret. I am amazed that in all La Salle and Peru and the surrounding country they could not get one or two reputable men to come here and sustain them. That is what I am amazed about.

Let me remark that you have been advised that the Sanitary District of Chicago is not an institution for profit. I ask you in the first place what of it? Counsel has told you it is a great institution, it is a great work, and a monument to the industry of the great metropolis of the middle West, and I grant it. It clears their drink-
4724 ing water, he says, takes the sewage from the streets and buildings down here and plants it down here. I grant it.

* * * I cannot imagine the people of the City of Chicago, in the purification of their own works, in the building up of their own sanitation, are so niggardly, so miserly as not to be willing to pay the damage. Suppose that your children and yourselves were living there and this great and grand improvement was made, would you be unwilling to do what the law says you should do in fairness and honesty? That is not the spirit of the City of Chicago. That is not the spirit that made it great; that is the spirit that lives further south, not at the head waters of the river.

4725 It is not an institution for profit, neither is the west side sewer. It is not an institution for profit and neither are the sewer systems of La Salle. * * * The sewer system of the City of La Salle is not for profit, either,

and if they empty their sewage upon your premises, do you think it would be a defense that would sound manly to have counsel representing the city to come in and say, "Yes, we took your property by way of damage, we empty our sewage upon it, but in doing so we were doing good to the City of La Salle." I know La Salle too well, so far as that is concerned, when you take the
 4726 things specifically, concretely and simply, to think that the citizens there would stand for such a plea, and I know that the people of Chicago would not and do not know it is being made. They are more honorable; they are more manly. It is not made for the public, this defense. Figure it if you can as a financial proposition and then conclude whether the Sanitary District of Chicago is pecuniary institution being operated for profit. The fact about it is they are selling their water power, selling their water power, deriving an income. That is the fact about it. But I simply take his argument as it was, admitting it is true, and I tell you men that it is inherently vicious and aimed at the prejudice of the jury. I know Chicago too well. I know the character of its citizens too well to believe that any such plea as that has their sanction or their knowledge. * * *

4731 We will take the difference between what the land produced by way of revenue since 1900 and what that land would have produced by way of revenue since 1900, if this water from Chicago was not there. That would amount to \$100,000 easily. I will take his own figure from that and accept from you men three times the amount that I am going to ask you for in this case.

4732 * * * Mike Charley might not suit the Sanitary District of Chicago, but he suits the citizens of La Salle mighty well. They elected him as their mayor; he might not suit the Sanitary District of Chicago, but he suits us in this case as a witness and we take his valuation,

not based on what some one told him, not based on facts that are not within his own knowledge, but based on his own experience with the land. We are willing to accept it. We are willing to take that testimony of Braun and Means, of Unzicker, of the bridge tender, of the old man Meyers, whom they tried to impeach because he said, "Didn't you want to take our readings down there at the Peru bridge?" We are willing to take that kind of proof in this case and be bound by it and I lay it to you, as a proposition in this case, that when you have to go to Utica for a Billie Crosier, who has no knowledge in relation to this land, did not even see it, and who
 4733 put it north of the river, when you have got to take men like Pusey here at Ottawa that didn't know any more about that land than I did in those days, and rely on that kind of proof in the face of what we produced, you are not in a position to come into this court room and tell us we have a worthless proposition. * * *

They produced one man and I want to call your attention to him. This man Miller, who said he saw the corn there last year. Mr. Chipperfield says that he does not want to stand with Ed Pyka. I don't want him to. I want to stand with Ed Pyka and Mike Charley, I want to stand with Unzicker and Meyer, Means and Ream; I want him to stand with Miller. I want him to stand with DaGroot, I want him to stand with Lindner and I will take my chances against his. He had Miller upon the stand and he placed his valuation and he had to see the corn, he had to see it. So where did he see it last year? He saw it in a wagon going along Water street in Peru. Do you remember that? He told me it was none of my business and eventually the court told me he would get the answer for me and I got the answer from him. He
 4734 says the corn he saw was in a wagon going along Water street, driving east, when as a matter of fact the corn

did not come half way up on the bluff. He is one of the men they bring here who claims to have seen the crops, the only man who claims to have seen the crops in the past twenty-five years. And he was caught red fisted, red fisted, and you men know it. And I want this defense to
 4735 stand with Miller and not to stand with our witnesses.

* * * He did not offer any apologies for Miller, caught red handed here in court during the trial. He did not offer any explanation for Pusey, who looked over the mountain of weeds that were not in existence at the time he made his sight, his view of the land, when he estimated its value.

4739 * * * When their witnesses come in here and place a valuation at from \$5 to \$15 for the surface, I tell you it is rotten. That is all there is to it. They are not worthy of belief, and these men admitted it, that they didn't know anything about it. * * * We didn't have to scurry around over the State of Illinois and take
 4740 haphazard men who didn't know but who would hazard an expert opinion. For what? What are experts paid to testify for? Do you know what expert testimony is in a lawsuit? It is the life preserver. Any time that the ship starts to go down the call is sent out for expert testimony. The life preservers are put on by the attorneys; the ship is foundering; they need help; the police boat. When they go to Champagne to these experts on the question of what you can do on the land and get expert real estate men who don't know the condition and pay them, I suppose, a specified amount, they are putting on the life preservers, because there is nothing left. That is the fact in this case. It is the fact in all these cases and you men know it, that if this defense was on the square, that they would have had people down there come in to sustain all of the facts presented here.

4742 * * * I will submit it to this jury as the fairest

proposition that was ever in court, the fairest proposition that we have produced the biggest line of disinterested witnesses that have ever appeared in a case of this kind. * * *

4744 * * * If you believe in our position you give us what we are asking for upon the proof and I will submit it to you as a conservative proposition that \$45,000 in damages in this case, and anything else is a defeat. Anything less than that is a defeat in this lawsuit and we don't want you men here to take and mess up this case. If you don't believe the way we do about it, you say so, and we will abide by the results and take our chances in the future. * * *

4745 I am going to submit this case to you gentlemen with simply this, that that is the spirit of the age. That is the spirit that permeates court rooms today, fair dealing, honest dealing, and I ask you men along that line to join in with that spirit and make this case either one thing or another. Either make it a lawsuit or tear it up. Don't stand on any middle ground and we will abide by the result. I do ask you and I am candid and frank in saying I am interested in the result because it is a long case and a big case and I want to say to you men so conduct yourselves from now on and so consider the proof in this case that when it is all over there will be no whispers or any suggestions or anything along the line
4746 that if other things had been done the result might have been different.

I thank you for your kindness to me throughout this long trial and I trust to meet all of you at some later date.

4747 Whereupon the court, at the request of the plaintiff, read and gave to the jury the following written instructions:

(1) The jury are instructed that by the law under

which the defendant is organized, it is provided, that if any channel is constructed by means of which any of the waters of Lake Michigan shall be caused to pass into the Desplaines or Illinois Rivers, such channel shall be constructed of sufficient size and capacity to produce and maintain at all times, a continuous flow of not less than 300,000 cubic feet of water per minute, and to be of a depth of not less than fourteen feet, and a current not exceeding three miles per hour; and if any portion of any such channel shall be cut through a territory with a rocky stratum where such rocky stratum is above a grade sufficient to produce the depth of the water from Lake Michigan, of not less than eighteen feet, such portion of said channel shall have double the flowing capacity above provided for, and a width of not less than 160 feet at the bottom, capable of producing a depth of not less than eighteen feet of water. If the population of the district draining into such channel shall at any time exceed 1,500,000, such channel shall be made and kept of such size and in such condition that it will produce and maintain at all times a continuous flow of not less than 20,000 cubic feet of water per minute for each 100,000 of the population of such district at a current of not more than three miles per hour. (*Given.*)

4708 (2) While the plaintiff must prove by a preponderance of the evidence in this case that it had the legal title to the land in question, yet you are charged that if the plaintiff has proven by the greater weight of all the evidence in this case that it was in the open, peaceable, notorious and exclusive possession either by itself or tenant, of the real estate described in the declaration in this case on and prior to the 17th day of January, 1900, and up to and including the time of the trial of this suit and during that time paid all taxes due thereon, then there is sufficient proof of its title for the purposes of

this suit in the absence of evidence tending to show that it does not have the legal title to said land. (*Given.*)

(3) The jury are instructed that it is their duty to consider this case in all its bearings the same as they would a case between two private citizens instead of a case in which the plaintiff is a coal company. Coal companies are entitled to the same fair and unprejudiced treatment in courts of law as individuals would be under like circumstances. In considering and deciding this case the jury should look solely to the evidence for the facts and to the instructions of the court for the law of this case and find their verdict accordingly without any reference as to who is plaintiff or who is defendant. You are instructed that the instructions given to you in this case are the instructions of the court and the law of the case which must govern you. (*Given.*)

4749 (4) You are instructed that by the constitution of this state it is provided that private property shall not be taken or damaged for public use without just compensation, and in this case if you believe from the evidence that the defendant, The Sanitary District of Chicago, has raised the level of the water in the Illinois River, and on any of the lands of the plaintiff, as charged in some count of the plaintiff's declaration in any amount; and further believe from the evidence that the plaintiff has been damaged thereby as charged in the declaration or some count thereof; then, in that state of the proof, you should find the defendant guilty and assess plaintiff's damages at such sum as you believe from the evidence plaintiff has sustained by reason of the said acts of the defendant, if proven as charged in the declaration. (*Given.*)

(5) The jury are instructed as a matter of law that the defendant, The Sanitary District of Chicago, under the statutes of the State of Illinois, is liable for all dam-

ages to real estate within or without such district which shall be overflowed or otherwise damaged, by reason of the construction, enlargement or use of any channel, ditch, drain, outlet or other improvement by said Sanitary District. (*Given.*)

(6) You are instructed that in determining the weight to be given to the evidence of the different witnesses in this case, the jury are authorized to consider the connection or relationship of the several witnesses to the parties if the same is proved by the evidence, their interest, if any is shown by the evidence in the result of the suit, 4750 their temper, feeling or bias, if any has been shown by them on the trial, their demeanor while testifying, their apparent intelligence and their means of knowledge as shown by the evidence, their apparent judgment so far as the same is shown by the evidence, and to give such credit to the testimony of each witness as under all the evidence and circumstances in the case such witness or witnesses are entitled to. (*Given.*)

(7) The jury are instructed that the fact that the number of witnesses testifying on one side is larger than the number testifying on the other side does not necessarily determine that the preponderance of evidence is on the side for which the larger number testified. (*Given.*)

(8) The jury are instructed, as a matter of law, that while it is true that the channel and the controlling works and Bear Trap Dam of the Sanitary District of Chicago is a lawful structure and that under the law creating said District the said District has the right by law to turn its sewage and waters from Lake Michigan down the Illinois valley and into the Illinois River, yet it is further the law that when the said Sanitary District does so turn the said waters down the Illinois valley, it becomes liable for any and all damages to real estate occasioned by the said waters or sewage. (*Given.*)

(9) You are instructed that in considering and weighing the evidence of any witness or witnesses, that has been read to you from depositions, you should give such evidence the same weight and effect that you would if 4751 such witnesses had been personally present and testified from the stand in open court in this case. (*Given.*)

(10) The court instructs the jury that you are not required to believe any statement to be a fact simply because any witness or witnesses has or have sworn it to be a fact, if you believe from the evidence that such witness or witnesses has or have wilfully and knowingly sworn falsely to such alleged fact, even if such witness or witnesses be not directly contradicted with respect to such matter by some other testimony. In considering this case and in passing upon your verdict you are not required to set aside your own common observation and experience as men in the affairs of life, but, on the other hand, you have the right, in considering the testimony of this case, to call to your aid your common observation and experience as men in the affairs of life, and you have the right, upon consideration of all the evidence in this case, in the light of your own common observation and experience as men in the affairs of life, to say where the truth lies upon any material fact in the case. (*Given.*)

(11) You are instructed that if you believe from the evidence the defendant constructed a channel and through such channel caused the waters from the Chicago River and Lake Michigan to flow into the Desplaines River and thence into the Illinois River and past and upon the lands of the plaintiff described in the declaration or some part 4752 thereof, and that by reason of such act of the defendant such lands, or any part thereof, have been depreciated in their market value or damaged in such value to any extent whatsoever as charged in the declaration or some count thereof, then your duty is to find the defendant

guilty, and return a verdict in favor of the plaintiff. (*Given.*)

(12) The jury are instructed that in making up their verdict in this case they should disregard all evidence and testimony which has been offered during the trial of this cause, and to which the court has sustained objections, and also all testimony and evidence which has been admitted upon the trial of this cause and which has been ordered stricken out of the record by the court. (*Given.*)

(13) The fact that the defendant built its channel and structures under authority of the legislature is no defense in this case to the claim of plaintiff. The act creating the Sanitary District of Chicago makes it liable for all damages to adjacent lands by overflow or otherwise by the waters of said District, and said District had no right to cause to flow on plaintiff's land any water that would not flow thereon in a state of nature. (*Given.*)

(14) In assessing the plaintiff's damages, if you find it is entitled to recover, you will regard the channel and structures of the defendant shown by the evidence as permanent structures, and you may consider what effect, if any, such channels and structures will have upon the
4753 plaintiff's land in the future. And in awarding damages, if you find for the plaintiff, you should award it all damages, present, past and future, which you believe from the evidence will be occasioned or have been occasioned to the fair cash market value of the lands described in the declaration. (*Given.*)

(15) You are instructed that the defendant, the Sanitary District of Chicago, is liable for damages if any is shown by the evidence to real estate of the plaintiff, which is overflowed or otherwise damaged, by reason of the construction or enlargement of any channel, outlet, ditch, drain or other improvement by said Sanitary District;

and if you believe from the evidence that the real estate described in the declaration or any part of it was owned by the plaintiff January 17, 1900, and that on that day, the defendant turned a volume of water into the Desplaines River, and that such water flowed then into the Illinois River as alleged in plaintiff's declaration, and that defendant thereby overflowed and damaged plaintiff's land as alleged in its declaration, then you will find the defendant guilty. (*Given.*)

(16) You are further instructed that in exercising the rights and powers granted to it, the defendant, the Sanitary District of Chicago, was bound to take into consideration the natural flow of water in the Desplaines and Illinois Rivers, and if you believe from the evidence that plaintiff's lands or any part of them, described in the declaration, have been damaged and injured by any increased flow in the Illinois River, due to waters from 4754 the Sanitary Canal, then the defendant is liable for such damages. (*Given.*)

(17) The court instructs the jury that even though they should believe from the evidence that any veins of coal lying underneath the surface of the land described in the declaration were worth, after the Sanitary District waters were turned into the Illinois River, as much as or more than they were worth before that was done, that fact will not deprive the owner of said land from collecting in this cause full compensation for any damages which may have been done to the market value of such land by the waters of the Sanitary District if any such damage was done, as elsewhere explained in these instructions.

(18) The court by any instruction given you in this case does not assume to tell you how much damage, if any, plaintiff is entitled to recover, but the question of the amount of plaintiff's damages is left entirely to

you under the evidence for your consideration. (*Given.*)

(19) In making up your minds as to the damages, if any, plaintiff has sustained by reason of the turning in of said water as mentioned in other instructions you may consider all the facts and circumstances in evidence, and you should take into consideration the fact that the waters of the Sanitary District of Chicago will continue to flow on plaintiff's land in the Illinois River perpetually. (*Given.*)

4755 (20) The jury are instructed that the measure of damages in this class of cases is the difference between the fair cash market value of the lands in dispute before and after the injury complained of in the declaration. And if the jury believe from the evidence that prior to the turning in of the waters of the Sanitary District January 17, 1900, the lands in question had a fair cash market value, and if you further believe from the evidence that the waters of the Chicago River and of Lake Michigan on January 17, 1900, permitted by the defendant to flow through its channel and controlling works from the Chicago River and Lake Michigan into the Desplaines River and that said waters would not have flowed into the said Desplaines River in a state of nature, and that said waters flowed from the Desplaines River into the Illinois River and down said Illinois River and in part, upon, over or onto the lands in question in this case, and that the amount of water turned from the Chicago River and Lake Michigan into the Desplaines River was gradually increased subsequent to January 17, 1900, and that the amount of said water continued in an increasing amount to flow into, upon and over and to saturate and flood the lands described in the declaration, then you are instructed that the measure of damages in this case is the difference between the fair cash market value of the land in question just before January 17, 1900, and the fair cash

market value thereof just after that date, as the same is shown by the evidence; and in estimating from the evidence the fair cash market value of the lands in question just after January 17, 1900, the jury should take into consideration all the circumstances and conditions of said land, and effect of said waters upon said land created by the said waters from the Chicago River and Lake Michigan as shown by the evidence, from January 17, 1900, down to this date. (*Given.*)

To which ruling of the court in reading and giving to the jury said above mentioned instructions, numbered 1 to 20, both inclusive, asked by the plaintiff, and each and every thereof, at the time they, and each of them, were so read and given to the jury, the defendant, by its counsel, then and there duly excepted.

And the defendant, by its attorney, asked the court to read and give to the jury the following written instructions:

(21) The jury are instructed that you cannot legally find a verdict for the plaintiff, merely because you may believe from the evidence that the real estate described in the declaration has been overflowed by water from the Illinois River.

The defendant in this case is not responsible for any injury done to said real estate, or any part thereof, by any water from the Illinois River which in a state of nature would overflow the same.

4757 If the jury find from the evidence that the water which has overflowed the real estate claimed by the plaintiff is due to excessive and continued rainfall within the watershed of the Illinois River and its tributaries, above said real estate, naturally forming a part of said river, and not by any act of the defendant, or from any cause under

its control, then the plaintiff cannot recover, and you will find a verdict for the defendant. (*Given.*)

(22) The jury are instructed that in considering the question of damage, if any, sustained by the real estate described in the declaration herein, on and shortly after January 17, 1900, due to any alleged act of the defendant, or any alleged cause under its control, you should determine from the evidence what was the fair cash market value of said real estate on and immediately prior to January 17, 1900, as compared with its fair cash market value shortly after said date, as affected, if at all, by the act of the defendant, or any cause under its control.

You are further instructed that in determining the question of the fair cash market value of said real estate, as aforesaid, you are not to consider the price which said real estate will sell for under special or extraordinary circumstances, but you should consider its fair cash market value. If sold in the open market under ordinary circumstances for cash, and not on time, assuming that the owner thereof is willing to sell for cash and the purchaser thereof is willing to buy for cash. (*Given.*)

(23) The jury are instructed that in this case the burden of proof is upon the plaintiff to show by a preponderance of the evidence that the defendant by the construction of its drainage channel and by causing certain of the waters of Lake Michigan to flow through the same into the Desplaines and Illinois Rivers, has caused injury and damage to the fair cash market value of the real estate described in the declaration, and to what extent, if at all, the real estate described in plaintiff's declaration has been by reason thereof depreciated in its fair cash market value.

The jury are further instructed that if any such injury and damage was occasioned by the act of the defendant, or by any cause solely under its control, to the fair cash

market value of the real estate described in the declaration such damage was caused in contemplation of law and the plaintiff's cause of action accrued on the 17th day of January, A. D. 1900, and that such damage, if any, is to be determined by the fair cash market value of said real estate on January 17, 1900, as compared with its fair cash market value affected thereby shortly after January 17, 1900. (*Given.*)

(24) The jury are instructed that under the law the plaintiff cannot recover damages for an alleged injury to the fair cash market value of the real estate described in the declaration, or any count thereof, unless the jury first believe from a preponderance of all the evidence in 4759 the case that the plaintiff on the 17th day of January, A. D. 1900, had title thereto.

If the plaintiff has failed to show by a preponderance of all the evidence in the case that it had title to the real estate described in its declaration on the 17th day of January, A. D. 1900, or to any part thereof, then as to such real estate, if any, the jury should entirely disregard the same in deliberating upon your verdict, and should, in such case, only consider the evidence with reference to such real estate, if any, as the plaintiff has shown by a preponderance of the evidence it had title to on the 17th day of January, A. D. 1900. (*Given.*)

(25) The jury are instructed that of the lands claimed by plaintiff in its declaration as originally filed in this cause, there has been withdrawn and eliminated therefrom 314.81 acres, and that there only remains in the case to be considered by you 630.46 acres of the lands described in the declaration. (*Given.*)

(26) The jury are instructed that by the term "preponderance of the evidence" is meant the greater weight of the evidence in the case, and you are further instructed that in every case, where a fact is asserted on one side,

and denied on the other side, the party holding the affirmative is required to prove such fact by a preponderance of the evidence.

This rule of law is one which has always been enforced and recognized by the courts in this state, as regulating the decision of the jury in all controverted cases of a civil
4760 nature, and the jury should carefully observe and follow such rule, in arriving at a verdict in the present case, and if from a consideration of all the evidence in the case, you do not find that the plaintiff has proved by a preponderance of the evidence the cause of action set forth in its declaration, or some one count thereof, then the plaintiff has failed to conform to the requirements of said rule of law, and has failed to make out its case as required by law, and under such circumstances, your verdict should be for the defendant. (*Given.*)

(27) The jury are instructed that the same considerations are to be regarded in determining the fair cash market value of the real estate claimed by the plaintiff, as far as the same are shown by the evidence, as in the sale of property between private parties, the inquiry in each case being: What is the property worth on the market, viewed not merely with reference to the use to which it is at the time applied, but with reference to the use to which it is peculiarly adapted—that is to say, what is it worth at the time? its availability for valuable uses being considered. (*Given.*)

(26) The jury are instructed that if it appears from the evidence that since January 17, 1900, by reason of an additional flow of water in the Illinois River, above and adjacent to the real estate claimed by the plaintiff, by reason of the conditions surrounding said real estate, it has become impracticable to raise field corn on said real estate, but that by reason of the intrinsic character
4761 of the said real estate and its natural surroundings it

is impracticable to successfully raise some other crop, or crops, thereon, then the law is that it is the duty of the plaintiff to devote said real estate to the best use for which it is adapted, and in determining the fair cash market value of the said real estate, it is the duty of the jury to consider, if the same is shown by the evidence, the highest and best use to which the same is shown by the evidence to be adapted. (*Given.*)

(29) The jury are instructed that the plaintiff in this case has the burden of showing by the greater weight of the evidence that the defendant has caused an injury and damage to the fair cash market value of the real estate described in the declaration by water flowing from Lake Michigan through its artificial channel into the Illinois River. Before the plaintiff can recover, it must show that such act of the defendant was the direct and proximate cause of the alleged injury and damage to the fair cash market value of the real estate described in the declaration, or some part thereof, and if in this case the condition of the proof is such that you have to resort entirely to speculation or conjecture for the purpose of determining whether the injury and damage to said real estate, if any is shown by the evidence, resulted from the act of the defendant, or from some cause under its control, or was occasioned by some cause entirely independent, since the law gives you no right to indulge in mere speculation
4762 or conjecture in determining the cause of any injury to the real estate described in the plaintiff's declaration, or to what extent, if any, said real estate has been damaged in its fair cash market value. (*Given.*)

(30) The jury are instructed that you are the sole judges of the credibility of the witnesses and of the weight to be given to their testimony, and while in the present case it is competent for the witnesses to give an opinion as to the fair cash market value of the real estate

described in the plaintiff's declaration on January 17, 1900, as compared with the fair cash market value of said real estate shortly after said date, and while it is your duty to consider all of such testimony in connection with all the other facts and circumstances in evidence, you are further instructed that you are only required to give such testimony such weight as you believe it is entitled to and you are not bound to take the opinion of any of the witnesses upon the question of the fair cash market value of said real estate as absolutely controlling, merely because said witnesses have testified thereto, but you have the right to exercise your own judgment in determining from such evidence and all the other facts and circumstances in proof before you, the degree of credit and weight to be given such testimony. (*Given.*)

(31) The jury are instructed that the burden of the proof in this case is not on the defendant, Sanitary District of Chicago, to show from the evidence that the injury and damage complained of in the plaintiff's declaration to the real estate described therein, is not due to
 4763 some cause under its control, or to some act for which it is responsible, but that the burden of the proof, on the contrary, is upon the plaintiff in this case to show by a preponderance of the evidence that the alleged injury and damage to the real estate described in the plaintiff's declaration, is caused solely by the act of the defendant, or is a result of some cause under its control. (*Given.*)

(32) The jury are instructed that it is your duty to decide this case upon a consideration of all the evidence, the legitimate arguments of counsel applicable thereto, and the instructions given to you by the court as to the law.

If you have any prejudice or bias against, or in favor of, either the plaintiff or the defendant, that may in any way affect your verdict, it is your duty in considering this

case and deliberating upon your verdict, to lay any such prejudice or bias aside, and not to permit the same, should it exist, to affect or influence your verdict in any manner or way whatsoever.

It is your duty to lay aside any preconceived notions you may have formed, not arising from the evidence in the case, concerning either the rights of the plaintiff or the defendant, and to decide this case solely from a consideration of the testimony you have heard in open court, the arguments of counsel and the instructions as to the law given by the court.

4764 It is your duty to use your best endeavors to do full and complete justice between the plaintiff and the defendant under the evidence and in accordance with the instructions of the court. (*Given.*)

(33) The jury are instructed that in determining the questions involved in the present case, it is your duty to confine yourselves solely to a consideration of the evidence in the case and such inferences as are naturally, reasonably and legitimately to be drawn therefrom.

The jury have no right and should not arbitrarily disregard any of the credible evidence in the case in arriving at a verdict.

It is the duty of the jury to consider all the evidence introduced by the plaintiff in connection with all the evidence introduced by the defendant, as applied to the contention of the plaintiff, that the real estate described in the declaration has been injured and damaged in manner and form as charged in the declaration, or some count thereof, by reason of the acts of the defendant, and the contention of the defendant that said real estate has not been damaged by reason of any act for which it is liable to respond in damages, together with the arguments submitted by the respective counsel for the parties, in so far as they are applicable to the evidence and the instruc-

tions given to you by the court, and if upon a consideration thereof the jury find the plaintiff has failed to prove the allegations of its declaration, or some count thereof, by the greater weight of the evidence, then the
4725 jury should return a verdict for the defendant. (*Given.*)

(34) The jury are instructed that by the term "fair cash market value," applied to the real estate described in the plaintiff's declaration, as used in these instructions, is meant the sum of money which a person desirous, but not compelled to buy, and an owner willing, but not obliged to sell, would agree on as a price to be given and received therefor. (*Given.*)

(35) The jury are instructed that under the law the burden of proof is upon the plaintiff to show that the injury to the fair cash market value of the real estate described in its declaration is the result of some cause under the control of the defendant, and for which it is responsible, and when such proof is sought to be made by evidence of circumstances, the circumstances must be such that the inference sought to be drawn therefrom is one which can be fairly and reasonably drawn from the circumstances in evidence, and if in the present case it does not appear from the evidence that the injury to the fair cash market value of the real estate described in the declaration, in manner and form as alleged therein, was caused solely as the result of some cause under the control of the defendant, as explained in these instructions, then the defendant would not be liable for all damages sustained thereto. (*Given.*)

(36) The jury are instructed that in determining whether the real estate claimed by the plaintiff has been
4766 permanently injured and damaged in its fair cash market value by reason of causes under the control of the defendant, in manner and form as alleged in the declaration, or some count thereof, you are not permitted to

indulge in any conjecture or speculation as to future possibilities affecting said real estate, or to draw any inference concerning future conditions upon said real estate unfavorable to the defendant, unless the same are based upon a preponderance of all the evidence in the case. If the future condition of said real estate, as affected by causes under the control of the defendant, as distinguished from any effect which other causes, whether natural or artificial, may in the future have therein, is not shown by a preponderance of all of the evidence in the case, or cannot be reasonably gathered therefrom, then the jury should not consider said matter as affecting to any extent your verdict in case you should return a verdict in favor of the plaintiff. (*Given.*)

(37) The jury are instructed that if it appears from the evidence that all of the injury and damage alleged to have been sustained to the real estate claimed by the plaintiff, since January 17, 1900, would have been sustained if the water of the Sanitary District had not been added to the Illinois River because of the increased flow in said river due to the added quantities of water deposited in said river as a result of drainage operations on said river and its tributaries and above said lands, since January 17, 1900, then you will find the defendant not guilty. (*Given.*)

4767 (38) The jury are instructed that among the allegations of the declaration in this case, which it is incumbent upon the plaintiff to support, by a preponderance of all of the evidence, is the one charging the defendant with turning and discharging or causing to be turned through and from its said drainage channel or canal into the Desplaines River, at or near the Village of Lockport, great quantities of water, to wit: 300,000 cubic feet per minute, more or less, in addition to the water naturally flowing into said river and from thence into the Illinois

River, thereby overflowing, permanently injuring and damaging the real estate claimed by the plaintiff, during the times referred to in said declaration, in its fair cash market value, and that the discharge of said water from the channel of the defendant, and its flowing from thence through the Desplaines River into the Illinois River, has been the cause of the alleged permanent injury and damage to the fair cash market value of the real estate claimed by the plaintiff.

The jury are further instructed that in determining whether or not the defendant has turned and discharged the water aforesaid into the Illinois River as aforesaid, the jury should have regard solely to the evidence in the case bearing upon said matters, and should not indulge in any conjecture or speculation not based on the evidence in the case with reference thereto, and if it does not appear from a preponderance of the evidence in the case that the defendant has thereby caused injury and damage
4768 to the fair cash market value of the real estate of the plaintiff, then the jury should find the defendant not guilty. (*Given.*)

(39) The jury are instructed that the damages which in any event can be recovered by the plaintiff in this action, in the event that you find from a preponderance of the evidence the plaintiff has proven the allegations of its declaration so as to entitle it to recover damages, is such sum only as will compensate the plaintiff for the actual loss sustained in the fair cash market value of the real estate which it has shown title to by reason of any permanent injury inflicted thereon solely by reason of the act of the defendant, or some cause under its control.

The jury are further instructed that such damages, if any have been shown by a preponderance of the evidence, should in no event be greater than an amount which will fairly compensate the plaintiff for any permanent injury

and damage, which is by a preponderance of the evidence shown to have been sustained in the fair cash market value of said real estate since January 17, 1900, by reason of some act of the defendant, or some cause under its control. (*Given.*)

(40) The jury are instructed that in the present case the only damage which you are authorized to consider is the damage, if any, which the plaintiff by a preponderance of the evidence has shown was sustained to the fair cash market value of the real estate described in the declaration, by reason of the acts of the defendant, or on account of causes solely under its control, on and shortly 4769 after the 17th day of January, A. D. 1900, and any loss which the plaintiff may have sustained to any crop or crops on said premises by reason of high water in the Illinois River is not a proper element of damage for which there can be a recovery in the present case. (*Given.*)

(41) The jury are instructed that if you believe from the evidence that during the years 1900 and 1901 no damage was occasioned to the fair cash market value of the real estate described in the declaration by reason of the turning into the Desplaines and Illinois Rivers on January 17, 1900, of the water of the defendant, or from any other act of the defendant, or cause under its control, then the law is that the plaintiff cannot recover in this action any amount as damages, and your verdict will be for the defendant. (*Given.*)

(42) The jury are instructed that the Illinois River is the natural recipient of all of the rainfall within the limits of the territory of its watershed and the watershed comprising its tributaries situate above the real estate described in plaintiff's declaration. The jury are further instructed that the defendant in this case is not responsible for any injury to, or damage accruing to the real estate described in the declaration herein, caused by

any of the water flowing in the Illinois River adjacent to said real estate, which is the result of rainfall, or comes from any of the tributaries flowing into said river, or from any other natural source or sources whatsoever, 4770 above the real estate described in plaintiff's declaration not within or under the control of the defendant. The jury are further instructed that although you may believe from the evidence that the real estate claimed by the plaintiff has been injured by overflow from the Illinois River, and that damage to its fair cash market value has resulted by reason thereof, yet you would not be authorized in returning a verdict against the defendant for such damage, unless you further believe from a preponderance of all the evidence in the case that such overflow was caused by the defendant. (*Given.*)

(43) The jury are instructed that if you believe from the evidence that all or any portion of the real estate claimed by plaintiff is, by reason of its surroundings, its natural advantages or its intrinsic character, adapted to some other use than the use to which the plaintiff has employed it, and that if used by the plaintiff for such other use the fair cash market value of said real estate, or the portion thereof shown to be so adapted, would shortly after January 17, 1900, be fully as great as shortly before said date, then the jury are instructed that as to said particular portions of such real estate the jury should find that no damage has been sustained thereto by the plaintiff. (*Given.*)

(44) The jury are instructed that the verdict in this case will not in any manner invest the defendant with title to any portion of the premises described in the declaration, or divest the plaintiff of any title which it has thereto, and in the event you find from a preponderance 4771 of the evidence that said premises have been permanently injured and damaged, as alleged in the declara-

tion, by reason of some act of the defendant, or from some cause under its control, the jury should not disregard the fact that after the termination of this trial such title of the plaintiff in and to said real estate will not be divested by your verdict. (*Given.*)

(45) The jury are instructed that although you may believe from the evidence that plaintiff has sustained injury and damage to the fair cash market value of the real estate described in its declaration from the combined effects of the waters of the Illinois River in a state of nature and the water added thereto by the defendant, still such proof would not authorize you in returning a verdict against the defendant for all of such damages. Before the jury would be authorized in returning a verdict for the plaintiff because of any injury or damage occasioned for the plaintiff because of any injury or damage occasioned to the fair cash market value of the real estate claimed by it, it must appear from a preponderance of the evidence what part of the total damage sustained thereto, if any was sustained, is attributable to the acts of the defendant, or chargeable to causes solely under the control of the defendant, to the exclusion of all other causes whatsoever. (*Refused.*)

(46) The jury are instructed that if you believe from the evidence that floods and freshets in the Illinois River have injured and damaged the real estate claimed by the plaintiff, in its fair cash market value, to the full extent
4772 described in the declaration herein, and that the injury and damage so sustained was not caused by any act of the defendant, or from any cause under its control, then such injury and damage, if any has been shown, creates no liability on the part of the defendant in this case to compensate the plaintiff for any loss occasioned thereby, and the jury will not be authorized under any such circumstances in finding a verdict in favor of the plaintiff,

but it will be your duty to return a verdict for the defendant. (*Refused.*)

(47) The jury are instructed that in case you should determine from the evidence to return a verdict in favor of the plaintiff, then in determining the difference, if any, in the fair cash market value of the premises described in the plaintiff's declaration shortly after January 17, 1900, as compared with the fair cash market value thereof, it will be proper for you to take into consideration, if the same is disclosed by the evidence, to what extent, if at all, the fair cash market value of said real estate will be depreciated by reason of any mining operations reasonably to be anticipated of the plaintiff to be conducted beneath the surface of said real estate, and whether or not the mining and removal of coal from said premises by the plaintiff will have a tendency to cause the surface of said premises to subside so as to cause the surface thereof to become less valuable for any purpose which it is by the evidence shown to be adapted. (*Refused.*)

4773 (48) The jury are instructed that in determining the fair cash market value of the real estate claimed by the plaintiff, on or about January 17, 1900, as affected by the acts of the defendant or some cause under its control, the jury should consider, if the same appears from the evidence, whether or not by reason of mining operations conducted beneath the surface of said premises, there has been thereby occasioned any surface subsidence, and if the jury find from the evidence that the surface of said real estate has subsided because of said mining operations, then the jury should determine to what extent, if at all, the fair cash market value of said real estate on said date had been depreciated by reason thereof, and in determining what, if any, injury and damage has been inflicted upon said real estate by the defendant as alleged in the plaintiff's declaration, the jury should be careful

to distinguish between the damage, if any, caused by the surface subsidence of said real estate, provided you find from the evidence that the surface of said real estate has subsided, by reason of any of the matters aforesaid, and any injury occasioned to said real estate by the act of the defendant, or from some cause under its control, as the defendant in this suit is only liable to respond in damages for injury inflicted as a result of its own act, or some cause under its control. (*Refused.*)

(49) The jury are instructed that the question of injury to, or loss of crops, pasture, rents, issues and profits, of the real estate described in the declaration, is not before you for your consideration, and it will there-
4774 fore be improper for you to consider any of said questions in deliberating upon your verdict in this case. The plaintiff in this action can recover, if at all, only for a permanent injury and damage to the fair cash market value of the real estate described in the plaintiff's declaration, which it is shown to have been the owner of, on the 17th day of January, 1900, arising from some act of the defendant, and not for an injury to the mere possession of said real estate. (*Refused.*)

(50) The jury are instructed that the damages alleged to have been sustained to the fair cash market value of the real estate described in the plaintiff's declaration, solely by reason of the acts of the defendant, or from causes under its control, on or about January 17, 1900, cannot be increased nor diminished in amount by evidence of any act or acts after the lapse of a short time subsequent thereto, and if there has been admitted in evidence any testimony which shows, or tends to show, that the alleged damage sustained by the plaintiff to the fair cash market value of said real estate on January 17, 1900, are due to the inability since said time to plant, cultivate or harvest crops on said real estate, the jury

should entirely disregard said testimony for the purpose of enhancing or aggravating the amount of damages alleged to have been sustained by plaintiff, to the fair cash market value of said real estate on January 17, 1900. (*Refused.*)

(51) The jury are instructed that where an action is
4775 brought to recover damages for an alleged permanent injury to real estate by reason of the construction of a public improvement, where none of said real estate has been actually taken, the law is that a recovery cannot be had unless the real estate claimed to have been damaged has become depreciated in value by the construction of said public improvement, and if the fair cash market value of the real estate is as much shortly after the construction of the improvement as it was before such improvement was constructed, then the law is that no damage has been sustained and no recovery can be had. If in the present case it appears from the evidence that on January 17, 1900, the defendant had completed its channel and commenced to discharge therefrom into the Desplaines River, and from thence into the Illinois River, water therefrom, and that the said channel of the defendant was of a permanent character, and is a lawful structure as explained in these instructions, and that by the use and operation thereof the real estate described in the plaintiff's declaration sustained no injury and was not damaged in its fair cash market value by reason thereof, from said date down to the commencement of this suit, then the law is there could be no recovery in the present case against the defendant. (*Refused.*)

(52) The jury are instructed that the defendant is not liable for and cannot be held responsible for any injury and damage inflicted upon the real estate claimed by the plaintiff by the water from the Illinois River, or its tributaries, which was not added thereto and placed there-

4776 in by the defendant, and although you may believe from a preponderance of the evidence that the water of the Illinois River has been increased to some extent in volume, depth or width, as a result of the acts of the defendant, nevertheless, you would not be authorized in returning a verdict against the defendant because thereof, unless it further appears from a preponderance of all the evidence in the case to what extent, if any, and how much, if at all, said river is so increased in depth, width or volume, by reason of such increased flow, and that the real estate claimed by the plaintiff has been damaged in its fair cash market value by reason of water added to said river by the acts of the defendant, and in deciding these questions you have no right to guess at the result, to speculate upon the probabilities of the case, nor to draw any inference concerning the same, not supported by the evidence in the case, but you must confine yourselves solely to the evidence in the case and to the legitimate inferences to be drawn therefrom, in reaching a verdict, and if after a careful consideration thereof it does not appear from a preponderance of all the evidence in the case to what extent, if any, and how much, if at all, the real estate claimed by the plaintiff has been injured and damaged by reason of the acts of the defendant, or from causes under its control, you will find the defendant not guilty. (*Refused.*)

(53) The jury are instructed that the defendant is not liable for any alleged injury to the real estate claimed by the plaintiff, unless it first appears from a preponderance of all the evidence in the case that the real estate
4777 described in the plaintiff's declaration has been depreciated in its fair cash market value, as alleged in the declaration, as a result of some cause shown to be under the control of the defendant. If the evidence in the case discloses both injury and damage to the real estate described

in the declaration produced by causes not shown to be under the control of the defendant, or if the evidence upon the question as to what it was, if anything, that has caused the injury and damage alleged to have been sustained as to the fair cash market value of the real estate claimed by the plaintiff, is in such a condition that there is just as much evidence tending to show that the alleged injury and damage was produced by causes not under the control of the defendant, as there is evidence tending to show that such injury and damage was occasioned by the defendant, then, in that state of the proof, the plaintiff has failed to make out its case by a preponderance of all the evidence, as required by law, and in either event your verdict should be for the defendant. (*Refused.*)

(54) The jury are instructed that in determining whether the plaintiff has shown by a preponderance of all the evidence in the case that the real estate described in its declaration has been injured and damaged in its fair cash market value, as alleged in said declaration, by reason of the acts of the defendant, or from causes under its control, you should take into consideration, if such fact is shown by the evidence in the case, in connection
 4778 with all the other evidence, facts and circumstances, all evidence relating to the effect of the water in the Illinois River at all stages of water upon the real estate claimed by the plaintiff, and if you believe from the evidence in the case that the elevation of the surface of the real estate claimed by the plaintiff was such prior to January 17, 1900, and before the addition of any water to said river by the defendant, the real estate claimed by the plaintiff was as frequently overflowed and as continuously submerged by the waters of the Illinois River as they have been at any time since said date, and that none of the causes under the control of the defendant, or any act of the defendant, has caused any additional injury

or damage to the fair cash market value of said real estate since said date, by overflowing the same, then the plaintiff cannot recover, and you will find a verdict for the defendant. (*Refused.*)

(55) The jury are instructed that the defendant is only required to respond in damages for injuries inflicted by acts performed by it, or from causes under its control; therefore, in the present case, if it is not shown by a preponderance of the evidence that the defendant has caused the injury and damage, or some part thereof, to the real estate claimed by plaintiff, in manner and form as alleged in the declaration, by reason of its own act, or from causes under its control, then the law requires you to return a verdict for the defendant, and it makes no difference whether you believe from the evidence in this
4779 case that the real estate claimed by the plaintiff, or some part thereof, has or has not been injured and damaged in its fair cash market value by some independent act or cause under the control of the defendant, such as rainfall on the watershed of the Illinois River and its tributaries above said real estate, or the prosecution of drainage operations upon lands within the watershed of the Illinois River, or its tributaries, above said real estate, affecting the discharge of surface water into any thereof, or from any other natural or artificial cause whatsoever, as the law does not require the defendant to respond in damages by reason thereof, but only holds it responsible for damage occasioned by its own acts, or from causes under its control. (*Refused.*)

(56) The jury are instructed that if it appears from the evidence that the plaintiff has at any time since January 17, 1900, made any statement or declaration as to the value of the real estate described in the real estate, or any part thereof, then the jury are instructed that you have a right to regard such statement or declaration as

binding upon the plaintiff in determining the fair cash market value of the deal estate claimed by the plaintiff. (*Refused.*)

(57) The jury are instructed that in determining the fair cash market value of the real estate claimed by the plaintiff, immediately before and shortly after January 17, 1900, that you should disregard all testimony, if any there be, as to the fair cash market value of said premises at either of said times, based upon what the witnesses testifying said he would personally give or be unwilling to give for said premises, or any part thereof. (*Refused.*)

(58) The jury are instructed that real estate is not to be deemed worthless because the owner allows it to go to waste or to be regarded as valueless because he is unable to put it to any use. Its availability for valuable uses and not its present employment is the criterion from which its fair cash market value is to be determined. (*Refused.*)

(59) The jury are instructed that the defendant has the right under the laws of the State of Illinois to cause an additional flow of water in the Illinois River, by discharging water from its channel into the Desplaines River and that in the exercise of such rights no presumption should be indulged in by the jury that by reason thereof such act has caused any of the damage alleged in the plaintiff's declaration, unless it first appears from a preponderance of all the evidence in the case that such is the fact. The defendant under the law is liable only for its own act, and is responsible only for any damage occasioned by the water added by it, to the water already in the Illinois River, no matter from what source it came, and in determining to what extent (if at all) the preponderance of the evidence discloses that the real estate described in the plaintiff's declaration has been injured

and damaged in its fair cash market value, the jury should distinguish between the damage (if any) inflicted by the water in the Illinois River in a state of nature, and the
 4781 damage (if any) occasioned by the water added to said river by the defendant, if the amount of water added to the river by the defendant is shown by a preponderance of all of the evidence in the case, and if the jury from the evidence are unable to say from a preponderance thereof that the defendant has caused injury and damage to the fair cash market value of the real estate described in the declaration, then the plaintiff cannot recover in this action, and the jury should find a verdict for the defendant. (*Refused.*)

(60) The jury are instructed that the defendant has the legal right to discharge through the Desplaines River into the Illinois River all of the water which it is shown by the evidence it has discharged, and that none of the acts of the defendant in this respect are wrongful, illegal, unjust, wilful, negligent, or in violation of any duty owing by it to the plaintiff, and that the jury have no right to return a verdict against the defendant in the present case merely because you may believe that the acts of the defendant complained of are either wrongful, illegal, unjust, wilful, negligent, or in disregard of the rights of the plaintiff. (*Refused.*)

(61) The jury are instructed that it is your duty to consider whether the injury complained of in the plaintiff's declaration is or was occasioned by the waters contained in the Illinois River in a state of nature, no matter whether the same were there deposited as a result of
 4782 rainfall upon the watershed of said Illinois River and its tributaries, or as a result of drainage operations conducted in, along, or upon any or either of the same, provided such facts are disclosed by the evidence, and if it appears from the evidence that all of the damage to the

real estate described in the plaintiff's declaration was occasioned by the water contained in said Illinois River in a state of nature, as distinguished from any waters placed therein by the defendant, then the law is that the defendant is not required in this action to respond in damages for any injury or damage to the fair cash market value of the real estate described in the plaintiff's declaration. (*Refused.*)

(62) The jury are instructed that in determining the fair cash market value of the real estate described in the plaintiff's declaration on and shortly before January 17, 1900, as compared with the fair cash market value thereof after January 17, 1900, you should take into consideration all of the uses of which the said real estate is susceptible, provided the same are shown by the evidence in the case; and if it appears from the evidence in the case that the said real estate is underlaid with one or more veins of bituminous coal of the same kind as are now being mined in the vicinity of the said real estate by the plaintiff, and that said real estate is so situated with reference to the mines of the plaintiff as to render the mining and removing of said coal from said mine of the plaintiff practicable, and that the plaintiff has the right
4783 to mine and remove said coal, such matters would be proper for you to consider in connection with all the other evidence in the case, in determining therefrom what was and is the fair cash market value of said real estate. (*Refused.*)

(63) The jury are instructed that in case you should determine from the evidence to return a verdict in favor of the plaintiff, then in determining the difference, if any, in the fair cash market value of the premises described in the plaintiff's declaration, shortly after January 17, 1900, as compared with the fair cash market value thereof on and shortly prior to said date, it will be proper for

you to take into consideration, if the same is disclosed by the evidence, to what extent, if at all, the fair cash market value of said real estate has been depreciated by reason of any mining operations of the plaintiff, conducted beneath the surface of said real estate, and whether or not the mining of coal from said premises has a tendency to cause the surface of said premises to subside, so as to cause the surface thereof to become less valuable for any purpose which it is shown by the evidence of the same is adapted. (*Refused.*)

(64) The jury are instructed that in determining the fair cash market value of the real estate described in the plaintiff's declaration, it is proper for you to take into consideration, in connection with all the other evidence in the case, all of the testimony, if any there be, showing sales of similar lands similarly situated on or about January 17, 1900, and you should give such evidence, if any there be, such weight as you deem it fairly to be entitled to, in determining the question as to what the fair cash market value of the real estate involved herein on January 17, 1900, actually was. (*Refused.*)

(65) The jury are instructed that in determining the fair cash market value of the premises claimed by the plaintiff on January 17, 1900, or shortly before or shortly after said date, you should disregard all testimony in the record, if any there be, which rests solely upon the size of the crops raised at any given period on said land, unless from such testimony or from other credible evidence or facts and circumstances in evidence it appears what were all of the conditions surrounding said premises at said time, with respect to all such matters as within the experience of the jury are known to influence the raising of crops on the lands in question. (*Refused.*)

(66) The jury are instructed that unless it appears from a preponderance of all the evidence in the case that

the water under the control of the defendant, when added to the waters of the Illinois River, has inflicted all of the injury and damage to the fair cash market value of the real estate described in the declaration, then the plaintiff cannot recover of the defendant for all of such injury and damage, even although the evidence may disclose and the jury may believe that the defendant is in part responsible therefor.

The jury are further instructed that in no event can the plaintiff recover damages from the defendant unless
4785 it is first shown by a preponderance of the evidence what part of such damage, if any, is due to or arises from the acts of the defendant, or from causes under its control, and if it does not appear by a preponderance of all the evidence in the case to what extent (if at all) the acts of the defendant, or causes under its control, have produced the alleged damage of which the plaintiff complains, then and in that state of the proof the plaintiff cannot recover, and the jury should find the defendant not guilty. (*Refused.*)

(67) The jury are instructed that if it appears from the evidence that any of the injury alleged to have been caused to the real estate claimed by the plaintiff since January 17, 1900, has been occasioned by drainage operations upon the watershed of the Illinois River, and that as a result thereof the rainfall within the territory comprising the watershed of the Illinois River is more rapidly collected and conveyed into the tributaries of said river above the point where the real estate claimed by the plaintiff is located, so that the same when emptied into the said Illinois River is with greater rapidity carried down said river to a point opposite the real estate claimed by the plaintiff, causing the waters in said river to rise and overflow said real estate independent of any act of the defendant, or any cause under its control, then the

law is if you find the facts aforesaid from the evidence in this case, that the defendant would not be liable to respond in damages to the plaintiff for any injury or damage occasioned thereby. (*Refused.*)

(68) The jury are instructed that under the law and 4786 the evidence you will find the defendant not guilty under the first count of the declaration. (*Refused.*)

(69) The jury are instructed that under the law and the evidence you will find the defendant not guilty under the second count of the declaration. (*Refused.*)

(70) The jury are instructed that under the law and the evidence you will find the defendant not guilty under the third count of the declaration. (*Refused.*)

(71) The jury are instructed that if you believe from a preponderance of the evidence that the plaintiff has sustained injury and damage to the fair cash market value of the real estate described in the declaration caused solely by the acts of the defendant, or by causes under its control, then, in determining the amount of any such damage, or the extent thereof, if the same is shown by a preponderance of the evidence, the jury are instructed that the plaintiff would only be entitled to recover as damages the difference between the fair cash market value of said real estate just before the 17th day of January, 1900, as compared with the fair cash market value of said real estate just after said date. (*Refused.*)

(72) The jury are instructed that under the law the defendant is only required to respond in damages for its own act, or because of some cause under its control, and the defendant is entitled, in the consideration of the 4787 evidence in this case, in case the jury find from the evidence that the fair cash market value of the real estate claimed by the plaintiff is depreciated in value, as compared with its fair cash market value on the 17th day of January, 1900, to the benefit of all such depreciation

shown by the evidence to have been caused by any act, series of acts, cause or combination of causes, independent of any act of the defendant, or cause under its control, and is entitled to have all of said matters, if any are disclosed by the evidence, ascertained, and the fair cash market value of said real estate, as affected thereby, determined, before the jury will be authorized to consider what additional damage, if any, has been occasioned thereto by reason of any act of the defendant, or from any cause under its control. (*Refused.*)

(73) The jury are instructed that if you believe from the evidence that by reason of mining operations under the surface of the real estate described in the plaintiff's declaration the surface of said real estate has subsided and fallen, and been lowered in elevation to a point where under ordinary conditions in the Illinois River, without the addition of any water thereto, placed therein by reason of any act of the defendant, or cause under its control, all, or some part thereof, has since January 17, 1900, become submerged and permanently injured and damaged, and thereby rendered unfit for the purpose of raising crops thereon, then the jury are instructed, if you find the facts aforesaid from the evidence, there could
4788 be no recovery in the present case against the defendant by reason of any damage sustained on account of overflow of said real estate by the waters of the Illinois River. (*Refused.*)

(74) The jury are instructed that the present suit was commenced on January 14, 1905, to recover for an alleged permanent injury and damage to the real estate described in the plaintiff's declaration, in manner and form as alleged therein, and that under the law the jury will have no right to consider the question of any permanent injury or damage to the market value of said real estate since the date of the commencement of said suit. (*Refused.*)

(75) The jury are instructed that if it appears from the evidence, or from a lack of evidence, that any portion of the real estate described in the plaintiff's declaration was not injured and damaged in its fair cash market value on or shortly after January 17, 1900, by reason of any act of the defendant, or from any cause under its control, that you should, in deliberating upon your verdict in this case, carefully exclude from your consideration such portion of said real estate as is not shown by a preponderance of the evidence to have been damaged in its fair cash market value as aforesaid, in determining to what extent (if at all) the remaining portion (if any) of said real estate was injured and damaged in its fair cash market value on or shortly after January 17, 1900, 4789 solely by reason of some act of the defendant, or some cause under its control, if the same appears from a preponderance of the evidence to have been injured and damaged in its fair cash market value on or shortly after January 17, 1900, as alleged in the plaintiff's declaration, in estimating the amount of damages (if any) to which plaintiff is entitled. (*Refused.*)

(76) The jury are instructed that if you believe from the evidence that on January 17, 1900, or any date since said date, the defendant has discharged a quantity of water into the Illinois River, and that the water so discharged into the Illinois River by the defendant has occasioned no injury or damage to the fair cash market value of the real estate claimed by the plaintiff, but that by reason of rainfall within the watershed of the Illinois River, or within the watershed of its tributaries above said real estate, or from any other natural causes, said real estate was thereby overflowed and damage was thereby inflicted to the fair cash market value thereof, to the extent shown by the proof in the present case, then the jury are instructed that the defendant is not liable there-

for, and you would not be authorized in returning a verdict assessing damages against the defendant. (*Refused.*)

77. The jury are instructed that proof of the fair cash market value of the real estate described in the plaintiff's declaration shortly before the 17th day of January, 1900, and proof that the fair cash market value thereof has depreciated since the 17th day of January, 1900, does not in and of itself constitute proof of any
4790 damage to said real estate on account of any act of the defendant, or by reason of any cause under its control, and unless the jury are able to determine from a preponderance of the evidence that any depreciation in the fair cash market value of the real estate of the plaintiff has been caused by some act of the defendant, or some cause under its control, since the 17th day of January, A. D. 1900, it will be your duty to return a verdict in favor of the defendant. (*Refused.*)

(78) The jury are instructed that in determining whether the plaintiff has shown by a preponderance of all the evidence that it has sustained the injury and damage to the fair cash market value of the real estate described in its declaration, or some part thereof, as alleged therein, as a result of the acts of the defendant, or from causes under its control, it will be proper for you to take into consideration, in connection with all the other evidence in the case, the evidence, if any there be, relating to the condition of the real estate claimed by the plaintiff prior to January 17, 1900, and if you believe from such evidence, if any there be, in connection with all the other credible evidence, facts and circumstances in the case, that said real estate had always in times of high water in the Illinois River prior to January 17, 1900, and without the addition to said river of any water added thereto by the defendant, been subject to overflow and was

overflowed, and since January 17, 1900, that the water under the control of the defendant, when added to the water otherwise in said river, is not by a preponderance
 4791 of the evidence shown to have caused any additional injury or damage to said real estate, then the plaintiff cannot recover in this action, and the jury will return a verdict for the defendant. (*Refused.*)

(79) The jury are instructed that of the lands claimed by plaintiff in its declaration as originally filed in this cause there have been withdrawn and eliminated therefrom 309.06 acres, and that there only remains to be considered by you 636.21 acres of the lands described in the declaration. (*Refused.*)

(80) The jury are instructed that in determining the question whether the plaintiff has shown by a preponderance of the evidence that it has sustained injury and damage, as alleged in its declaration, to the fair cash market value of the real estate described therein, or some part thereof, by reason of some act of the defendant, or from some cause under its control, you should take into consideration, if you find it is disclosed by the testimony, all evidence relating to the condition of the real estate described in the declaration shortly prior to January 17, 1900, in connection with all the other facts and circumstances disclosed by the proof, and if you believe therefrom that all of the injury and damage to the fair cash market value of said real estate since said date was caused by natural causes, independent of any water added to said river by the defendant, such as rainfall in the territory drained by the Illinois River and its tributaries,
 4792 ies, above said real estate, causing and producing continued high water in said river, and consequent overflow of the real estate claimed by plaintiff, independent of any act of the defendant, or any cause under its control, thereby producing all the injury and damage of which

the plaintiff complains in its declaration, or if the evidence with reference to the causes which have produced the injury and damage of which the plaintiff complains is so evenly balanced that you cannot say therefrom that the plaintiff has shown by a preponderance of all the evidence in the case that the injury and damage complained of to the fair cash market value of said real estate, or some part thereof, is due to the act of the defendant, or to some cause under its control, then the plaintiff cannot recover and you will find the defendant not guilty. (*Refused.*)

Whereupon the court, at the request of the defendant, read and gave to the jury said above mentioned instructions numbered, respectively, 21 to 44, both inclusive, and each and every thereof, as asked by the defendant.

But the court then and there refused to read and give to the jury said above mentioned instructions asked by the defendant and numbered, respectively, 45 to 80, both inclusive, and each and every thereof, and wrote on the margin thereof the word "*Refused*" and additional words as above indicated.

To which ruling of the court in refusing to read and give to the jury said instructions above mentioned, numbered, respectively, 45 to 80, both inclusive, and each and
4793 every thereof, asked by the defendant, and in marking upon the margin of each thereof the word "*Refused*," and the additional words above shown, the defendant, by its counsel, then and there duly excepted.

Thereupon the court read and gave to the jury the following forms of verdict:

The COURT: As to forms of verdict. If the jury find the defendant guilty, the form of your verdict may be as follows:

"We, the jury, find the defendant guilty, and assess

plaintiff's damages at the sum of (here insert such sum as you may find from the evidence)."

If the jury find the defendant not guilty, the form of your verdict may be as follows:

"We, the jury, find the defendant not guilty."

Write out your verdict on a separate sheet of paper and each sign it.

To which ruling and decision of the court in reading and giving to the jury the above mentioned forms of verdict, and each and every thereof, the defendant, by its attorney, then and there duly excepted.

The COURT: The court has prepared two separate forms of verdict for you and they are on this buff or yellow paper attached to the instruction as to the form of your verdict. After you have agreed among yourselves on the verdict that you wish to return you may then use one of these forms on this yellow paper that corresponds
4794 to your finding. That will save you writing out the form of your verdict yourself. You are at liberty to use one of the forms written out by the court and furnished you, the one that agrees with your finding.

When you have agreed upon your verdict, if the court happens to be in session at the time, you may return it into open court. If you agree upon a verdict when the court is not in session you may seal it up in an envelope that will be delivered to you by your bailiff and all sign it and then meet the court in the morning at 9 o'clock, when your verdict will be opened and read in your presence. All be there.

It may be that I will not be present when you shall have agreed upon your verdict; in that case Judge Eldredge will receive your verdict and discharge you. I will take this occasion, therefore, of saying good-by to you again; it may be the last farewell I will extend to you during this trial. In case that is so, I wish to express my

thanks to you and my good wishes for your future happiness and your families. I feel as if it was more than a mere acquaintance between court and jury on account of being together so long; there is a sort of feeling, on my part at least, of friendship and I want to express that feeling to you. I hope I will meet you all some time again after the case is over.

I will say good-night to you again once more; it is perhaps the last time in this trial. You may go now with the officer.

4795 Thereupon the jury retired to consider of their verdict, and after deliberation thereon had, returned into court their verdict as follows:

“We, the jury, find the defendant guilty, and assess plaintiff’s damages at the sum of thirty-five thousand dollars.

(Signed) WM. McELROY, *Foreman*;
 E. J. LANIGAN,
 JOHN L. DWYER,
 THOMAS GOTCH,
 JAMES GREEN,
 JAMES DUNLAP,
 GEORGE COULSON,
 JOHN WALZER,
 JOHN L. FRANGENBERG,
 CHRIST SCHRUMPH,
 FRED WEBERLING,
 JOHN VOIPUND.”

And afterwards, to wit: upon the 11th day of December, A. D. 1912 (the same being one of the days of the said October term of said court for the year aforesaid), the defendant, by its attorney, moved the court to set aside the verdict of the jury in said cause and for a new trial, and afterwards, to wit: upon the 12th day of De-

ember, A. D. 1912, filed in said court in said cause its written motion for a new trial and its points in writing, particularly specifying the grounds of such motion in the words and figures following, to wit:

4796 STATE OF ILLINOIS, }
COUNTY OF LA SALLE. } ss.

IN THE CIRCUIT COURT.

October Term, A. D. 1912.

The La Salle County Carbon Coal Company, a corporation, <i>Plaintiff,</i> <i>vs.</i> The Sanitary District of Chicago, a municipal corporation, <i>Defendant.</i>	}	Case.
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Now comes the defendant, The Sanitary District of Chicago, by Chipperfield & Chipperfield, its attorneys, and moves the court to set aside the verdict of the jury rendered herein, and to grant a new trial of the above entitled cause, for the reasons following, viz.:

I.

The court erred in sustaining plaintiff's demurrer to defendant's fourth plea.

II.

The court erred in refusing leave to the defendant to file a plea of *nul tiel* corporation herein.

III.

The court admitted on the trial improper evidence, over the objection of the defendant.

IV.

The court refused to admit upon the trial proper documentary evidence offered by the defendant.

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V.

The court refused to admit upon the trial proper oral testimony offered by the defendant.

VI.

The court erred in admitting as evidence upon the trial Exhibits 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 (both inclusive), offered by the plaintiff, over the objection of the defendant.

VII.

The court erred in improperly restricting the cross-examination by defendant of the witnesses who testified on behalf of the plaintiff.

VIII.

The court erred in not properly restricting the cross-examination by the plaintiff of the witnesses who testified upon behalf of the defendant.

IX.

The court erred in refusing to allow the defendant to make proof of facts specified in certain offers appearing in the record, after sustaining objection of plaintiff to questions having for their purpose the eliciting of such testimony.

X.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 1, as requested by defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

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XI.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 2, as requested by defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XII.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 3, as requested by defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XIII.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 4, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XIV.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 5, as requested by the defendant in its motion at the conclusion of the taking of testimony upon behalf of the plaintiff.

XV.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 6, as requested by defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XVI.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 7, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XVII.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 8, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XVIII.

The court erred in refusing to exclude from the evidence in this case Defendant's Exhibit 9, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

XIX.

The court erred in refusing at the close of plaintiff's case to grant the several motions made by defendant to exclude the testimony specified from the consideration of the jury.

XX.

The court erred in denying the motion of the defendant at the close of the plaintiff's case, to strike from the record the testimony of the following witnesses, viz.: Joseph Grainer, Henry Rean, Henry Myer, Charles Mudge, Ed Pyka, Charles Castendyck, Otto Halm, Fred A. Mudge, M. J. Charlies, Abram Voorhees and Charles Dooly.

XXI.

The court erred in denying the motion of the defendant made at the conclusion of plaintiff's case, to strike 4800 from the record the testimony of the various witnesses specified, with reference to the overflow of plaintiff's premises, injury to, condition of, or value of crops thereon, or to the use said premises were put since January 17, 1900.

XXII.

The court erred in denying the motion of the defendant at the conclusion of the plaintiff's case, to strike from the record the testimony of the various witnesses specified, with reference to any injury to crops upon the premises claimed by plaintiff for the years 1902 to 1912 (both inclusive).

XXIII.

The court erred in granting the motion of plaintiff to strike from the declaration certain lands specified in said motion, without requiring amendment of the declaration to correspond accordingly.

XXIV.

The court erred in permitting plaintiff to enter a disclaimer as to certain lands described in the plaintiff's declaration.

XXV.

The court erred in denying the motion of defendant to exclude at the close of plaintiff's case the testimony of certain witnesses specified therein, for the reason that the same constituted a variance between the allegations of the declaration and the proof.

XXVI.

The court erred in submitting to the jury the issues in the case without requiring plaintiff to amend the declaration and eliminate therefrom the real estate which was excluded by the court from the consideration of the jury, or by the voluntary act of the plaintiff is disclaiming as to said real estate.

XXVII.

The court erred at the conclusion of the plaintiff's case in denying the motion of the defendant to instruct the jury to find the defendant not guilty, under the first count of the declaration.

XXVIII.

The court erred at the conclusion of the plaintiff's case in denying the motion of the defendant to instruct the jury to find the defendant not guilty under the second count of the declaration.

XXIX.

The court erred at the conclusion of the plaintiff's case in denying the motion of the defendant to instruct the jury to find the defendant not guilty under the third count of the declaration.

XXX.

The court erred at the conclusion of the taking of testimony upon behalf of the plaintiff, in denyng the motion of the defendant to instruct the jury to return a verdict finding the defendant not guilty.

XXXI.

The court erred in refusing to sustain objections of the defendant to improper remarks of counsel for plaintiff made in its opening statement, to the refusal of which the defendant duly excepted.

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XXXII.

The court erred in sustaining objections of the plaintiff to certain parts of the opening statement made by counsel for the defendant.

XXXIII.

The court erred in failing to sustain the objection of defendant to the improper conduct of plaintiff's counsel while defendant's opening statement was being made to the jury.

XXXIV.

The conduct of counsel for plaintiff in the hearing and presence of the jury was improper and duly excepted to by the defendant.

XXXV.

The counsel for plaintiff made improper remarks during the trial in the presence of the jury, which was duly objected to by the defendant.

XXXVI.

The closing argument of counsel for the plaintiff was improper, in the particulars objected to by defendant.

XXXVII.

The conduct of plaintiff's counsel, with reference to the jury, was improper.

XXXVIII.

The conduct of the jury was improper.

XXXIX.

The court erred in refusing to hear the reasonable argument of counsel for the defendant upon matters of law involved in the suit, when requested by counsel to 4803 do so, and in arbitrarily refusing leave to counsel for the defendant to present such argument.

XL.

The court erred in refusing to allow proof of the several offers of proof made by the defendant upon the trial.

XLI.

The court erred in refusing to sustain objections interposed by defendant to questions and answers specified in the depositions read on the trial.

XLII.

The court erred in admitting in evidence, over the objection of defendant, the various exhibits referred to in the depositions read on the trial.

XLIII.

The court erred in striking from the record, over the objection of defendant, portions of the testimony contained in the answer of witnesses being examined by the defendant.

XLIV.

The court erred in refusing to grant the motions of the defendant to strike from the record certain portions of the answers of witnesses being examined by the plaintiff.

XLV.

The court erred in adopting on the trial an improper rule as to measure of damages, over the objection of the defendant.

XLVI.

The court erred in restricting proof as to conditions affecting lands described in declaration to period subsequent to January 1, 1883, of its own motion.

4804

XLVII.

The court erred in denying to the defendant the right to prove the fair cash market value of the premises described in the declaration at the time of the trial.

XLVIII.

The court erred in refusing to admit as evidence the charter of the plaintiff corporation, offered by the defendant.

XLIX.

The court erred in allowing the witness Hazen, over the objection of the defendant, to testify as to his mental processes in reaching a conclusion as to the value of the lands referred to in the statement made to R. G. Dun & Company by the witness.

L.

The court erred in allowing the witnesses for the plaintiff, in giving an opinion as to the fair cash market value of the real estate described in the declaration, to take into consideration matters known only to themselves, existing up to the time of the trial, and concerning which there was no testimony in the record.

LI.

The plaintiff failed to prove ownership of the real estate described in its declaration.

LII.

The court erred at the conclusion of the taking of testimony on the trial, in denying the motion of the defendant to instruct the jury under the first count of the declaration to return a verdict of not guilty.

LIII.

The court erred at the conclusion of the taking of testimony on the trial, in denying the motion of the defendant to instruct the jury under the second count of the declaration to return a verdict of not guilty.

LIV.

The court erred at the conclusion of the taking of testimony on the trial, in denying the motion of the defendant to instruct the jury under the third count of the declaration to return a verdict of not guilty.

LV.

The court erred at the conclusion of the taking of testimony on the trial, in denying the motion of the defendant to instruct the jury to return a verdict finding the defendant not guilty.

LVI.

The court erred in giving to the jury instructions numbered 1 to 20 (both inclusive), requested on the part of the plaintiff.

LVII.

The court erred in refusing to give to the jury instructions numbered 45 to 80 (both inclusive), requested on behalf of the defendant.

LVIII.

The damages awarded by the jury are excessive, and a result of passion and prejudice upon the part of the jury.

LIX.

The verdict of the jury is contrary to the law and the evidence.

LX.

The verdict of the jury is contrary to the evidence.

LXI.

The verdict of the jury is contrary to the law.

LXII.

The court erred in improperly instructing the jury as to the form of a verdict finding for the plaintiff.

LXIII.

Improper remarks made by the court during the trial and in the presence and hearing of the jury and duly excepted to by the defendant.

LXIV.

The court erred in denying the motion of the defendant to exclude the deposition of the witness E. L. Cooley.

LXV.

The court erred in overruling the motion of the defendant to strike from the record the testimony of the witness, E. L. Cooley, respecting matters covered by his deposition read upon the trial.

LXVI.

The court erred in overruling the motion of defendant to exclude from the consideration of the jury various tracts of real estate claimed by the plaintiff and specified in said motion.

LXVII.

The jury were improperly allowed to separate after the cause was submitted to them for decision and before the verdict herein was presented to the court.

LXVIII.

The court improperly permitted the witness, Hazen, to alter and change the effect of the statement made by him on behalf of the plaintiff in this case to R. G. Dun & Company by stating to the jury what was his secret intention and undisclosed meaning at the time he so made said statement, thus changing the effect of said statement by the undisclosed mental reservation of said Hazen at said time.

LXIX.

The court erred in allowing the several witnesses for plaintiff to testify over the objection of the defendant to the fair cash market value of the surface only of the real estate claimed by plaintiff, instead of stating an opinion as to the fair cash market value of the entire estate described in plaintiff's declaration.

THE SANITARY DISTRICT OF CHICAGO,
By CHIPERFIELD & CHIPERFIELD,
Its Attorneys.

Endorsed upon the back as follows:

"No. Common Law Chancery. State of Illinois, La Salle County. In Circuit Court. October Term, A. D. 1912. La Salle County Carbon Coal Company *vs.* The Sanitary District of Chicago. Motion of defendant for a new trial. Chipersfield & Chipersfield, Attorneys at Law and Solicitors in Chancery, Canton, Fulton County, Illinois. For Defendant."

Bill of exceptions.

Proceedings had in said court on January 4, 1913, in the cause of La Salle County Carbon Coal Company *vs.* Sanitary District of Chicago, before the Honorable Samuel C. Stough, judge of said court.

4808 Motion by defendant for leave to withdraw motion for new trial in order to enter a motion for judgment *non obstanti veridicto*. Motion allowed.

Motion by defendant for judgment notwithstanding the verdict in the case. Motion overruled by the court. To which ruling the defendant then and there excepted.

Motion to set aside verdict in said cause and for a new trial.

The COURT: The motion for a new trial is overruled.

To which ruling of the court the defendant, by its attorney, then and there duly excepted.

Motion in arrest of judgment.

Motion in arrest of judgment overruled, to which ruling the defendant then and there excepted.

4813

Mr. DUNCAN: At the trial we introduced a notice served upon the District as a foundation for a claim on the part of the plaintiff for attorneys' fees. We desire to have that disposed of before the order for appeal is entered.

Mr. CHIPERFIELD: As I told you, Mr. Duncan, in the other room, the first suggestion I have had that a question of that sort would come up was perhaps ten minutes ago. We are not prepared. It may be set down and we will come here at that time and dispose of this motion.

Mr. DUNCAN: I would like to have the matter set for some day next week.

The COURT: Does it have to be disposed of before the appeal is heard?

Mr. DUNCAN: I think, your Honor, it ought to be a part of the same judgment.

4814 Mr. CHIPERFIELD: It is entirely separate and distinct and so held that they are not related and that an appeal may be taken from one without the other.

Mr. DUNCAN: I think that is true. The language of the statute upon that subject is in these words, "And in case judgment is rendered against such District for damage, the plaintiff shall also recover his reasonable attorneys' fees to be taxed as costs of suit."

Mr. O'CONOR: It is customary to take it up at this time.

Mr. O'DONNELL: If your Honor please, attorneys' fees are taxed as costs by the court on the hearing of the motion. The rule is invariable that an appeal, if perfected, takes up the case, and takes it entirely out of this court and into the Supreme Court. As soon as the appeal is perfected, the case is then out of this court, and, therefore, before the appeal is even allowed the attorneys' fees should be taxed.

Mr. CHIPERFIELD: I do not care whether judgment is entered today or not, but we are certainly not ready to take up the question of the taxation of attorneys' fees
4815 without having some notice of that matter. We want to have a reasonable time in which to prepare. I don't know what these gentlemen ask in the way of attorneys' fees, but we anticipate it will be a sufficient amount to require some preparation.

The COURT: I will enter our motion to tax the attorneys' fees. I will set it for Saturday morning at ten o'clock.

• Mr. CHIPERFIELD: I want the record to show that the judgment is entered now.

The COURT: I will enter judgment if there is no objection to it. I am not informed as to the procedure in the taxation of attorneys' fees.

Mr. DUNCAN: In order that there may be no question here, I think the entry of judgment should wait until the
4816 matter of attorneys' fees is settled.

The COURT: The motion for a new trial will be over-

ruled, and the motion in arrest of judgment overruled. I will let it stand that way.

Mr. CHIPERFIELD: We want the record to show, which I think it does already, that we preserve an exception to the overruling of the motion to enter a judgment, notwithstanding the verdict, for the defendant.

The COURT: Yes.

Mr. CHIPERFIELD: I want the record also to show that we now except to the ruling of the court in overruling the motion for a new trial and also to the ruling of the court in overruling the motion in arrest of judgment.

The COURT: Yes.

4817 Motion by defendant for rule on the plaintiff to furnish a bill of particulars as to the amounts and items which compose application for taxation of solicitors' fees.

4818 The COURT: I think I will enter a rule on the plaintiff to file a bill of particulars.

4819 Plaintiff ruled to file bill of particulars by Tuesday morning next.

Further proceedings postponed until Saturday morning, January 11, 1913.

4820 Hearing on motion of plaintiff for allowance of attorneys' fees and taxation of the same as costs in said court, before the Honorable Samuel C. Stough, judge of said court, in which the following proceedings were had.

4821 Mr. CHIPERFIELD: Now in this matter a purported bill of particulars has been filed which is as limited in detail as it is large in assurance of the amount of fees demanded. We know what work was done in court and there is a trifle of \$7,000 demanded in the way of fees. It may be an insignificant item as compared with the *ad damnum* in the main case. In a very general way a statement is made of what work was done outside of court. I am not prepared to go into the hearing in this case or to produce our proofs until a bill of particulars is filed that

will show the number of days that it is contended was occupied out of court, and the kind of work that was done on those days, and the days that were devoted to the preparation of this case. If this were a bill that was submitted to an ordinary client by his own counsel he would be entitled to at least that much, and how much more true is it when it is a bill submitted to an adverse party on which they are called to come into court to make their defense and show why the compensation demanded should not be allowed. And it gives us absolutely no basis to prepare for this hearing and we are not ready until a more specific bill of particulars is filed, and we wish to make a motion to require the plaintiff to file a more particular bill of particulars, a more specific bill of particulars setting forth the services that were rendered in detail instead of in a general manner.

4822 And in that same connection we wish to enter a motion for a continuance in this hearing until such specific statement is made and time given us to prepare to meet it. Here is a general shot gun charge filed in this case in what is the center of attraction for the opposition, \$7,000, saying that they have filed a declaration. We know they did. Saying that they interviewed witnesses; we presume that is true. Saying that they prepared for trial; possibly that may be so. But the time that is employed in the preparation for trial, these other matters in detail or any detail, anything that approaches detail is not given, and I submit to your Honor how is it possible for the defendant in this case to prepare for a hearing without having some basis on which to prepare. And so we wish to submit both of those motions.

Mr. O'DONNELL: If the court please, as I understand Mr. Chipperfield he concedes that the character of the work performed is fully set forth in the bill.

Mr. CHIPPERFIELD: What is that?

Mr. O'DONNELL: Is fully set forth in the bill of particulars.

Mr. CHIPERFIELD: Then I fail to make myself understood.

Mr. O'DONNELL: Well, I understand and we will——

4823 Mr. CHIPERFIELD: I don't care how counsel understood me, all I want is that I make my meaning plain to the court.

Mr. O'DONNELL: I understood you to say that it set forth the preparation of the case, filing of the declaration, interviewing of witnesses, preparing for trial and you had a suspicion that we might have prepared for trial, and the work done in court and that that was very forcibly set forth. No greater particularity can be obtained in this case unless in the language of the authors you "plead your evidence." The work necessarily does not depend upon the actual number of days that were devoted to the proof or what kind of work was done, and if the bill of particulars is to be more specific than the one on file here it will have to specify the number of hours devoted to each witness, the number of witnesses interviewed, and the places we walked about the land and the importance of the issues that we were handling and the questions of law pertaining to them. This would be a perfectly good bill of particulars if rendered to a client, and if it is good enough for a client it is good enough for the purpose of this motion.

There is no lack of particularity in it that would deceive a lawyer or the Sanitary District, which is the greatest machine in Illinois, to prepare for trial; it knows something about the case. We have devoted time to the preparation of the case and Mr. Chiperfield has, and we have done the best we could.

4824 Mr. CHIPERFIELD: You haven't done very much.

Mr. O'DONNELL: We have set out the facts as well as

we could and that is all that could be done in the case. I doubt whether a bill of particulars was necessary. It is not a matter of right in this case to have a bill of particulars at all. The court entered the rule in its discretion in order to aid in the investigation of the matter. Now Mr. Chipperfield in his address to the court has not said one word pointing out—has not advanced one point wherein he could not prepare for trial on this bill of particulars. We would have to prove the preparation, we would have to prove the filing of papers, we would have to prove the argument of demurrers, we would have to prove the argument of defenses alleged and the defenses claimed, we would have to prove the amendments, we would have to prove the interviewing of witnesses, but it would be hardly expected that we would hold a watch on ourselves, and aside from the itemization of hours and minutes the bill of particulars in my judgment is particularly sufficient in this case.

Mr. CHIPPERFIELD: I want to call your Honor's attention to the bill of particulars that has been filed. There isn't a thing in this bill of particulars that adds one single scintilla of information to the general charge that these gentlemen, some of them coming in at the division of the raiment, these gentlemen have furnished such valuable
4825 service that they appear only when the raiment is to be torn up. They are all here. And there is nothing in the bill of particulars that in any way affords us any light on this subject.

Mr. DUNCAN: I don't think, if the court please, that we, who have lived here all our lives are compelled to sit silent under the imputations brought forth here by this stranger that comes to us——

Mr. CHIPPERFIELD: You have an advantage perhaps over the stranger.

Mr. DUNCAN: No, we haven't any advantage.

Mr. CHIPERFIELD: Haven't you?

Mr. DUNCAN: We are here to protect the interests of our client——

Mr. CHIPERFIELD: You haven't shown much interest in it until now.

Mr. DUNCAN: Now we are not going to sit here and listen to the abuse of this man in the presence of the court, or otherwise. We are not here for the purpose of attending the division of the spoils; we have a client in this case, if the court please, that is amply responsible and who is required to pay us our fees, from whom we will collect our fees whether the court allows us anything—allows us anything in this motion or not. We are not looking to Mr. Chiperfield nor to this organization that he represents in Chicago for our money. We have 4728 earned our money, we have earned it with good hard work and we expect the client to pay us. We are not here expecting any charity at his hand or at his client's hand. Nor does the sneering of the gentleman, if he can be so called, add anything to the force of what he says.

Mr. CHIPERFIELD: The recent convert is always the most enthusiastic. This is the important gentleman's first appearance in the case.

Mr. DUNCAN: I have been in this case from its inception and he knows it.

Mr. CHIPERFIELD: He was a stranger to the court room and all that transpired.

The COURT: I wish you would read this to me. I started to read it a number of times here, but I did not get very far.

Mr. CHIPERFIELD (reading): "The plaintiff claims attorneys' fees for services performed by attorneys employed by it, at, in and about the preparation and trial of said cause, to-wit: The attorneys employed by the plaintiff were Duncan, Doyle & O'Connor, J. L. O'Donnell

and A. E. Butters, and the services performed by them were consultations with officers of the plaintiff; preparation and service of notice under Section 19, or the Sanitary District Act upon one of the trustees of the defendant; preparation of declaration and commencing of suit; services in court in and about argument of demurrers, 4789 motions for continuance, motion for change of venue and attention to the case in the Circuit Court of La Salle County from 1905 to the date of trial; services of attorneys in examining the lands described in the declaration and preparing the evidence and consulting with witnesses; and examination of all questions of law arising before and during the trial and for trial of the cause in the Circuit Court of La Salle County before the court and a jury, and preparing for and attending the hearing on motion for new trial, \$7,000."

That is 20 per cent.

The COURT: It states about everything that is usually charged for in a law suit, but it is unlike the usual bill in having the price attached to each item. Otherwise I don't know but what it is sufficient to notify the other side what services they rendered about a law suit. Ordinarily they would state examining the law so much, so many days in court so much. The only variance that I see from the ordinary bill of particulars for lawyers' fees is the separate charge for different services.

4830 Mr. CHIPERFIELD: Yes, your Honor. It is quite a considerable amount. It is about once and a half as much as the niggardly State of Illinois gives to the circuit judge sitting a whole year. It is not a mere bag-a-telle; it is rather a decent amount.

The COURT: Well, I am not certain that a bill of particulars is required, but I thought it was fair that they should state what their services were in a general way,

so I ordered it. But I think I will overrule your motion and give you one more exception before the case is over.
 4831 To which ruling of the court the defendant duly excepted.

Mr. CHIPERFIELD: Before we proceed—that also applies to the motion for a continuance?

The COURT: Yes, your motion.

Mr. CHIPERFIELD: And also an exception to that.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Before we proceed any further in the matter of the taxation of the attorneys' fees, we want to have judgment entered in this case as the next step that is taken. Until judgment is entered, this and no other court has any right to determine upon the question of fees.

The COURT: I will pass that question up to the attorneys on the other side. I haven't considered it.

Mr. DUNCAN: The hearing on the question or motion for the fixing of attorneys' fees, it seems to us, should be had so the court may enter the judgment against the defendant for the amount of the verdict and enter his judgment as to the cost, fixing the amount of the attorneys' fees as costs.
 4832

The COURT: Do you object to the entry of judgment before the evidence for attorneys' fees is heard?

Mr. DUNCAN: Yes, your Honor.

The COURT: Well, I will sustain the objection and exception by defendant.

Mr. CHIPERFIELD: And we except.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Now, if your Honor please, we protest against being required to appear upon the question of the taxation of any costs in this case until a judgment

has been entered against one of the parties to this suit upon which costs can be predicated. Your Honor knows absolutely that costs can only be predicated upon a judgment and that it is a step that is taken after judgment only when it is against the unsuccessful party. And the statute in this case, Section 19, specifically requires the judgment to precede the taxation of the costs.

Mr. DUNCAN: Representing the plaintiff, if the court please, we feel that it is immaterial insofar as whether or not the judgment on the verdict is entered before the 4833 amount of attorneys' fees is fixed. The statute reads that in the event that the plaintiff secures a judgment for damages, the court shall enter judgment for the attorneys' fees for plaintiff.

Mr. CHIPERFIELD: The statute does not so read. The statute reads: "And in case judgment is rendered against such District for damage, the plaintiff shall also recover his reasonable fees to be taxed as costs of suit." The condition precedent is the rendition of judgment.

The COURT: Do you want to proceed with the hearing of the evidence respecting the attorneys' fees now or after judgment is rendered?

Mr. O'DONNELL: We would think the proper way would be to hear the evidence on the question of the attorneys' fees and then after that is done the court can——

The COURT: Well, Mr. Chiperfield's objection is overruled. Call your witnesses.

4834 To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Let me suggest, your Honor, that we want to make a separate bill of exceptions in this matter. At least we are going to tender a separate bill, and so there may be no question as to the chronology of things we want it to appear that this hearing is held be-

fore the entry of judgment in this case, and that the defendant protests against being required to proceed with the hearing in this case until judgment has been rendered, and only proceeds in this hearing because required so to do by the court.

The COURT: The record may show that.

Mr. CHIPERFIELD: All right.

(Thereupon seven witnesses were sworn.)

4835 JAMES L. O'DONNELL, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination.

My name is James L. O'Donnell; I reside in Joliet, Will County, Illinois. I am sixty-three years old. Lawyer by profession and have been practicing continuously since 1874. Have lived continuously in Joliet since said time. Have been engaged in the general practice of law, 4836 but not in La Salle County to any great extent. Have attended to a few matters, equity matters and one or two common law cases only. During a portion of the time Will and La Salle Counties were in the same judicial district, but am unable to say how long.

Am acquainted with the officers of the plaintiff; was employed in this suit by its president in 1904, in re- 4837 sponse to a letter from Mr. Wyeth requesting me to call upon him.

Mr. CHIPERFIELD: I object, the letter will be the best evidence.

The COURT: I will let that stand.

4838 To which ruling of the court the defendant, by its counsel, then and there duly excepted.

4839 Mr. CHIPERFIELD: Will your Honor rule concerning exceptions that they apply to each and all, that the ex-

ceptions apply to all objections if desired? May that be understood?

The COURT: Every adverse ruling will have its exception.

The WITNESS (continuing): I went to Chicago and spent the afternoon with Mr. Wyeth consulting with him about the question of recovery of damages in behalf of the plaintiff for overflow of lands described in the declaration in this case. A short time after that I met Mr. Wyeth and other persons connected with the plaintiff in Chicago and got the special descriptions, spent the afternoon in consulting with them and arranging for the commencement of the suit, discussing the question of what attorneys they desired to have in the case. After consultation with the firm of Duncan, Doyle & O'Connor, and getting the descriptions from the company, we prepared a notice and served upon the Sanitary District of Chicago demanding a settlement of the damages. That notice I think I prepared in my office in Joliet after consultation at Ottawa.

Mr. CHIPERFIELD: I move to strike from the statement of the witness anything as to the contents of the notice 4840 on the ground the notice itself would be the best evidence.

The COURT: I think I will overrule the motion.

Exception by defendant.

The WITNESS: The exhibit marked "21" in this suit is the notice to which I refer. After the preparation of the notice I went to the offices of the Sanitary District of Chicago—

Mr. CHIPERFIELD: Wait a minute, I object to it, incompetent, immaterial and irrelevant.

The COURT: I think I will overrule the objection.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

4841 The WITNESS: And delivered a copy of the witness to William H. Baker——

Mr. CHIPERFIELD: I object to the proof of service of notice at this time; the statute requires the proof be made on the trial.

The COURT: I think I will overrule the objection.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

The WITNESS: —one of the trustees of the Sanitary District of Chicago a copy of this original and brought it home and kept it in custody until recently when I delivered it to Duncan & O'Connor, at Ottawa.

Mr. CHIPERFIELD: If the court please, I move to strike from the record the statement of the witness concerning the service of this notice, as the statute requires that the proof shall be made upon the trial and not upon the hearing——

Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

The WITNESS: The date of the service on Mr. Baker was October 25, 1904.

4842 Mr. CHIPERFIELD: Same objection, same motion.

The COURT: I will overrule the motion.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

Mr. DUNCAN: I now offer the document, which is spoken of as the notice marked in this case as Exhibit "21," in evidence.

Mr. CHIPERFIELD: If your Honor please, I object to it on the ground it is incompetent, irrelevant and immaterial.

Mr. BUTTERS: It was introduced on the hearing.

Mr. CHIPERFIELD: No, it was not.

Mr. BUTTERS: Yes, it was.

Mr. CHIPERFIELD: Read the record, that will speak.

Mr. BUTTERS: You stated at the time it was introduced if you had any further objection to it—

Mr. CHIPERFIELD: You better read the record.

Mr. BUTTERS: —that you would make it known at that time, otherwise it could be considered in.

Mr. CHIPERFIELD: That is not true.

Mr. BUTTERS: That is true.

Mr. CHIPERFIELD: Now, I have got the record and I know what it states, I know what it states and I know that is not correct. The record will show. I looked it up within the last twenty-four hours. The objection is this, that it is incompetent, irrelevant and immaterial and that the statute requires that the proof shall be made
4843 upon the trial of the service of this notice, and that has not been done, and we object to it being patched up at this time.

The COURT: I think I will overrule that objection.

To which ruling of the court the defendant by its counsel then and there duly excepted.

Mr. DUNCAN: This is marked Exhibit "21."

Mr. CHIPERFIELD: I want that introduced as an exhibit on this hearing as we are taking a separate bill of exceptions on appeal on this question of attorneys' fees.

Whereupon said document was marked Plaintiff's Exhibit "1" and is in words and figures following, to-wit:

PLAINTIFF'S EXHIBIT 1.

4844

(Exhibit 21.)

"To the Sanitary District of Chicago:

Take notice that I am the owner of and claim damages to the following lands in Township thirty-three (33) North, and of Range One (1) East of the Third (3rd) Principal Meridian";

Being a part of the same lands described in the plaintiff's declaration,

4845 "To the amount of One Hundred and Ninety-two Thousand and Seven Hundred (\$192,700.00) Dollars, which damages to said premises are caused by overflow of the Illinois River upon said premises by reason of the discharge into that river through the Desplaines River in the State of Illinois, of a volume of water by the Sanitary District of Chicago by channels and outlets constructed by said Sanitary District to conduct the waters of Lake Michigan and other waters into said Desplaines River, and also by other embankments, channels and outlets in the Counties of Cook, Du Page and Will, in the State of Illinois, constructed by said Sanitary District to increase the flow of water in said Desplaines River and thereby carry the same into the Illinois River; which channels, embankments and outlets were constructed and are permanently maintained by said Sanitary District of Chicago, and that I intend to sue for said damages.

Dated this 25th day of Oct., A. D. 1904.

LA SALLE COUNTY CARBON COAL CO.,

F. O. WYATT,

(SEAL.)

Secretary.

Delivered copy to Wm. H. Baker, trustee, October 25, 1904.

J. L. O'DONNELL."

4846 "To the Sanitary District of Chicago:

Similar notice applying to other lands described in plaintiff's declaration claiming damage for the sum of Ten Thousand and Two Hundred (\$10,200.00) Dollars. Dated the 25th day of October, A. D. 1904, and signed La Salle County Carbon Coal Co., F. O. Wyatt, Secretary. (Seal.)

Delivered a copy of above to Wm. H. Baker, trustee,
Oct. 25, 1904.

J. L. O'DONNELL."

4847 Similar notice describing part of the lands contained in plaintiff's declaration alleging damage in the sum of One Thousand (\$1,000) Dollars thereto, and dated this 25th day of October, A. D. 1904. Signed, "La Salle County Carbon Coal Co. F. O. Wyatt, Secretary." (Seal.)

Endorsed, "Delivered a copy to Wm. H. Baker, trustee, Oct. 25, 1904.

J. L. O'DONNELL."

4848 Similar notice covering a portion of the lands described in plaintiff's declaration alleging damage in the sum of Forty Thousand (\$40,000) Dollars, dated "This 25th day of October, A. D. 1904." Signed "La Salle County Carbon Coal Co., F. O. Wyatt, Secretary." (Seal.)

4849 Endorsed "Delivered a copy to Wm. H. Baker, trustee, Oct. 25, 1904.

J. L. O'DONNELL."

A similar notice describing part of the lands described in plaintiff's declaration alleging damage in the sum of Three Thousand (\$3,000) Dollars. "Dated this 25th day of October, A. D. 1904." Signed "La Salle County Carbon Coal Co., F. O. Wyatt, Secretary." (Seal.)

4850 Endorsed, "Delivered copy to Wm. H. Baker, trustee, Oct. 25, 1904.

J. L. O'DONNELL."

A similar notice describing a portion of the lands described in the plaintiff's declaration, alleging damage in the sum of Twenty-five Hundred (\$2,500) Dollars. "Dated this 25th day of October, A. D. 1904." Signed "La Salle County Carbon Coal Co., F. O. Wyatt, Secretary." (Seal.)

4851 Endorsed, "Delivered a copy to Wm. H. Baker, trustee, Oct. 25, 1904.

J. L. O'DONNELL."

Similar notice describing a part of lands contained in plaintiff's declaration, alleging damage in the sum of One Hundred and Thirty-five Thousand (\$135,000) Dollars. "Dated this 25th day of October, A. D. 1904. La-
4852 Salle County Carbon Coal Co., F. O. Wyatt, Secretary."
(Seal.)

Endorsed, "Delivered copy to Wm. H. Baker, trustee, Oct. 25, 1904.

J. L. O'DONNELL."

Similar notice describing part of lands contained in plaintiff's declaration claiming damage in the sum of One Thousand (\$1,000) Dollars.
4853 "Dated this 25th day of October, A. D. 1904. La Salle County Carbon Coal Co., F. O. Wyatt, Secretary."
(Seal.)

Endorsed, "Delivered a copy to Wm. H. Baker, trustee, Oct. 25, 1904.

J. L. O'DONNELL."

4854 Mr. DUNCAN: Marked in this hearing now as Plaintiff's Exhibit "1," and I understand the court admits it in evidence.

The COURT: Yes.

The WITNESS (continuing): Then I afterwards prepared the declaration in this case and brought it to Ottawa and went over the declaration with Duncan, Doyle & O'Connor, and we commenced suit, I think, on the same day the declaration was completed. The formal parts of the declaration were prepared, reduced to printing, prepared and printed and used in this case together with other cases against the same defendant, all excepting the description of the real estate.

I then assisted in preparing for the taking of depositions to apply to all cases pending in this and other counties and in getting witnesses in Joliet as to the local condition of the river, being witnesses whose depositions I presume are on file in this case. I interviewed these witnesses. I got a photographer to make pictures in the City of Joliet and directed how to make them, or rather where to make them. And I got a photographer to make
4854 pictures farther up the channel. I called at the offices of the La Salle County Carbon Coal Company in Chicago and arranged to have consultations about the matter with Mr. Hazen in La Salle and Mr. Duncan in Ottawa. I was present at the taking of all those depositions which were common to all cases, and before doing that I interviewed the witnesses, all except the president, chief engineer and E. L. Cooley. I interviewed all the other witnesses and interviewed some of the witnesses at the Bear Trap Dam before that time, some of them with whom I was acquainted. I attended in this court on the hearing of argument of some demurrers and motions for continuance, motion for change of venue, and Mr. Duncan and I argued some demurrers, and upon pleas being filed we met here counsel for the opposite side on various occasions.

I went to La Salle twice, accompanied by Mr. Duncan, and went over the matters of the witnesses and the descriptions of the land and the character of the land, in the offices of the plaintiff at La Salle. Then about a year ago I went over the portion of the land south of Peru, accompanied by Mr. Duncan and Mr. Hazen. After that, as the trial was approaching, I spent a day in La Salle with Mr. Hazen interviewing witnesses. In making our preparation for the case we had in view the fact
4856 of the character of the defenses that probably would be introduced and the scope of the inquiry. The San-

itary District cases involved the question of the turning in of the waters of the Sanitary District from Lake Michigan and from the four branches of the Chicago River into the Desplaines River, thence into the Illinois River, and the injuries complained of were said to result from the turning in of these waters. They also involved the question of the Thirty-ninth street channel which was afterwards constructed, its effect upon the case, and also the proposed work in the Calumet region. It also involved the question of the quantity of the flow at various times.

The waters were formally turned in on the 17th day of January, 1900. Up to 1907 the quantity of water turned into the Illinois River by the defendant was regulated by what was known as the Bear Trap Dam and seven gates adjacent thereto. Subsequent to 1907 the water was also let out at the power house about three miles farther down the channel. The power house about 1907 was completed and the channel extended from the Lockport basin down to that and the water was let out there.

We examined very carefully the reports of the Sanitary District of Chicago. There was nothing published that we could use as evidence as to the quantity of the flow, and we were obliged to go out and make preparations to prove the quantity of flow if possible. The Sanitary District, while a municipal corporation, was kept in such a way that we did not have access to its records, and could not examine the records, and with difficulty obtained the evidence. We found some difficulty also in the taking of depositions on that score. It involved the question of the relative quantity of water which naturally flowed in the Illinois River and the quantity that was turned in artificially by the defendant. We talked with persons down the river in regard to the changed

appearance of the river and as to any marks we could secure for elevations of the water. As to the main issue, not having engineering testimony at hand, we were obliged to prepare ourselves as well as we could to show the actual condition of the land before the turning in of the Sanitary District water and its condition afterwards. That was as far as my services were concerned in interviewing the witnesses and consulting with Mr. Hazen and Mr. Duncan, as well as by writing letters very frequently to Messrs. Duncan and Hazen in the way of preparation.

I think I spent in all about sixteen days from the time of my interview up to the trial, in and about the matter of the case.

4858 The work done in regard to preparing, or consultations regarded as necessary to the preparation of the evidence I will say was done generally; in regard to the condition of the water as to its elevation at different places, each piece of land in a general way had a characteristic of its own. Some land lay low where the water would come in directly over the flats, and some land was claimed to be affected by bayous and creeks backing up into it; some land lay high at the river, sloped back from the river.

The lands of the La Salle County Carbon Coal Company were different in formation than most of the other pieces and they required some examination different from the others, but the general preparation for the
4859 proof of the flow of the water applied to all and the general preparation in regard to the attempt to compare the volume of the water of the Sanitary District with the volume of the natural water applied to all.

The labor performed in taking depositions at Joliet and Chicago applied to all the cases, did not apply to this particular case.

I think I appear as attorney for plaintiff in about

ninety cases in Bureau, La Salle and Grundy Counties. I did not engage in the trial of the present case.

Q. How did that come? A. At the time the trial commenced—

4860 Mr. CHIPERFIELD: That is objected to as being immaterial. The fact is he was not here.

The COURT: I think I will let him answer.

Mr. CHIPERFIELD: All right.

To which ruling of the court the defendant by its counsel then and there duly excepted.

A. At the time the trial commenced I was engaged in actually trying a case in Bureau County, Illinois, which continued for some time after the trial of this case commenced.

During the recesses of the trial that I was engaged in in Bureau County I had some conferences with the attorneys engaged in the trial of this case, in reference to it. I kept up a correspondence with them quite ex-
4861 tensively, and I came here one day for the purpose of consulting Mr. Duncan and Mr. O'Connor and Mr. Butters, and stayed over night and until noon the next day for the purpose of rendering what assistance I could in the matter during the trial.

Cross-Examination of the Witness James L. O'Donnell.

I and my associates had a contract or agreement with the plaintiff relative to our compensation in the event of a recovery in this case. I do not know where the agreement is. I do not know that I ever saw it. We had
4862 two agreements; which one do you mean? The last agreement was a verbal agreement between us and the superintendent in regard to the cases, made at the office in La Salle. The written agreement is not in my possession. I do not know where it is. If it is in existence at all it is in either the possession of Mr. Hazen, of the

plaintiff or Mr. Duncan. It was a contract in favor of us as attorneys. I told you I don't know where it is.

Mr. CHIPERFIELD: Then I want to call at this time, so that I may more intelligently conduct this case, I call upon opposite counsel to produce the agreement that I may question this witness further.

4863 Mr. DUNCAN: There isn't any written agreement in force and has not been for a long time.

Mr. CHIPERFIELD: I don't care whether it is in force or not. I want the written agreement that was entered into concerning the fees of these attorneys, if it is in existence; if not, then I will make secondary proof of it. We will see whether it is in force or not.

Mr. DUNCAN: You may make all the proof you are permitted to.

Mr. CHIPERFIELD: It is not to make the proof, I want to cross-examine this witness now. Surely it is nothing remarkable I should ask, if there was a contract, that that contract be exhibited.

The WITNESS: I haven't got it.

Mr. CHIPERFIELD: You understand I am addressing my remarks to the court.

The WITNESS: Never had it.

Mr. CHIPERFIELD: I am not addressing my remarks to the witness, and I want opposite counsel at this time to produce that contract so that I may interrogate the witness concerning it, that is all.

The COURT: If they have it, I think they ought to produce it.

Mr. DUNCAN: We haven't got it here, your Honor, and I don't know that we have it.

Mr. CHIPERFIELD: Well—

4864 Mr. DUNCAN: I am not sure about that. It is years and years that these cases have been pending—

Mr. CHIPERFIELD: Seven years.

Mr. DUNCAN: Eight years now, nearly.

Mr. CHIPERFIELD: Now, if your Honor please—

Mr. DUNCAN: Following the—

Mr. CHIPERFIELD: If your Honor please—

Mr. DUNCAN: And that contract was made in writing about the time that the suit was begun. Some time afterwards and a long time before this case was tried and before most of the work that was done in it was done, the written contract was abrogated absolutely and the agreement made with the client as to the attorneys' fees verbally.

Mr. CHIPERFIELD: I want the written contract as far as it was in force. The written contract speaks accurately.

Mr. DUNCAN: Well, I speak accurately, if the court please, on the general proposition.

Mr. CHIPERFIELD: If your Honor please, I want them to produce the written contract.

The COURT: Well, he says he doesn't have it. I can't rule him to produce something he hasn't got.

Mr. CHIPERFIELD: As to his knowelge, I don't know. I think the court should instruct him to make an effort to produce it when it is called for. The fact that he 3865 says, if your Honor will indulge me just a moment, that he don't know, implies that it may be in their possession. Why should we not—

The COURT: I have already said if they have it they should produce it.

Mr. CHIPERFIELD: I know, but we have—

Mr. DUNCAN: If the court please, we have had no notice until this moment. I state honestly to the court that we may have it and we may not. It is a paper of absolutely no use of any kind at the present time and has not been for a long time. Now these gentlemen knew, they knew as far ago as the trial of the Brennan case,

that there was a contract of that kind entered into between us, Mr. O'Donnell and others, with reference to all of the plaintiffs, or nearly all of them, at the time that these suits were begun. There has been no notice served upon us to produce this old contract. We haven't attempted to locate it and I don't know whether we have got it or not. They knew we had it and if they wanted it—they knew at least in the Brennan case that the contract had been subrogated a long time before that time, so if they wanted to have that old contract under those circumstances notice should have been served in the matter.

Mr. CHIPERFIELD: I want to take sharp issue with you when you say we knew of the contract in this case. We
4866 knew nothing about this case at all, although we had a suspicion there might be. So far as its being abrogated is concerned we don't know it, and don't think it is the case.

(Examination continued.)

Q. Now, you say there was some verbal agreement afterwards? A. Why, Mr. Hazen, representing the Coal Company and Mr. Duncan and myself had an agreement in the office in La Salle. I cannot fix the date. I know Mr. Wyeth died only a short time ago. It was before his death, how long I do not know. The contract was that we were to have reasonable compensation for all our services. That contract was made after the declaration had been filed and after we had entered upon the preparation of this case. I do not remember what the written contract contained. At the present time I do not know
4867 what the contents of the other contract were. I knew it at the time we modified it. I don't know how I happened to forget it in the meantime. I have never seen the contract; I might have signed it; I don't know whether I did, but I have never seen the contract. The

contract has always been down in this part of the country, the written contract I mean. I don't know the contents of that contract. I simply do not remember, my memory does not recall. I cannot say when I forgot. We had different contracts providing for different amounts of compensation with different clients. I would
 4868 not want to tell you that I know the amount of this compensation. I simply don't know. I knew it at the time we modified the contract, but I suppose the lapse of time has caused me to forget it. I do not remember any of the provisions of the contract at this moment. I think I was a party to it; suppose I would have had the right to its possession. I never had possession of it for one moment. I am willing and anxious it should be produced, that is all I can say. I don't know whether I will make an effort to produce it or not.

4869 I was employed in a large number of cases against the Sanitary District involving the question of overflow of lands in the Illinois Valley. My notion was that there were between 90 and 110, but I never counted them. I remember once I estimated 110, but I am not sure about that. I presume I am employed in about forty cases in La Salle County. I don't know that I am employed in
 4870 fifteen cases in Grundy County. I have, within the last two years, been employed in the Johnson case; before that I commenced a couple of cases, or three cases up near the mouth of the river, but I never had any other cases in Grundy County.

I don't remember that I am employed in twenty-one cases in Putnam County. I am not employed with Mr. Trimble and Mr. Duncan in some cases there.

I was employed in Bureau County in thirty-three or thirty-four cases, all the Sanitary District cases in the county.

4871 I was employed in several cases in Marshall County.

I do not know that I was employed in 125 cases. The record shows it. I think I was employed in as many as 110 cases altogether.

When I secured these employments I commenced to prepare a general form of declaration to be used, which would contain all the allegations that I considered necessary, and provided for the insertion of the description of the property, and had a large number of copies printed. The labor in preparing this case involved all the cases in which I was employed. I cannot tell you how long I was engaged, the number of days, in preparing the declaration in this case.

4872 Q. You were just long enough employed to fill in the descriptions, wasn't you, a mere clerk's work, wasn't it?

A. I presume that is so, as far as making the declaration is concerned, yes.

I appeared upon the taking of the depositions. The depositions were taken in substantially all the counties with the exception of Grundy County in which I was employed. Other counsel appeared upon the taking of these depositions, Judge Curran, and Timothy Beach of Lincoln, and a number of other interested counsel. Very much of the work connected with the taking of these depositions was performed by these gentlemen that I have mentioned.

4873 After the depositions were taken they were printed by wholesale and copies sent around in boxes to the different counties. The labor which I performed in that behalf extended equally to all cases in which I was then interested, which by stipulation the depositions were to apply to.

Q. How many times do you charge for the taking of those depositions? A. Why, I haven't made any estimate of the time as applied to this case; it should bear its proportion of the cost simply, should bear its proportion in this case.

I did no particular work in this case in reference to the taking of depositions; it was simply done in reference to the scores of cases which were then pending. I tried to make an investigation of the flow of the Sanitary
 4874 District water and of the water originally in the Illinois River through the agents of the Sanitary District; talked to them.

Q. With the exception of the particular questions involved in this suit, that is, the contour of the land and the effect of the water on this particular piece of land, these other questions had been well determined, had become familiar to you by reason of your trial of other cases, had they not? A. Yes, and as the time progressed and other cases were tried, we had to meet again and had interviews because of the defenses the Sanitary District introduced, and we were learning more from time to time.

I have tried a number of cases against the Sanitary District, and during the time that this trial was going on I was trying two cases during practically all the time in Bureau County. I am making claims for fees for the trial of those cases.

4875 Q. And in your statement of fees in those cases will you make claim for the same labor that you have described, the preparation of the declaration and the taking of the depositions, and pile it up a number of times in the different cases, or do you exclude that in those other cases; in other words, is this the only case wherein you present a claim for that? A. I have made my statement of what I did in the preparation according to the facts I have just stated. What I did I have stated. What I did for all the cases I have stated. How you characterize it I do not know. I did it, that is all. You participated in the depositions and you are familiar with it.

Q. In the Smith case and the Albert Miller case in Bureau County, settlement has been arrived at in which

you received compensation from these clients on the theory of work you had done which was done for all the cases, did you not?

Objected to by plaintiff.

Mr. CHIPERFIELD: My point is this, your Honor, if you will allow me, please. Here there is a recitation of general work, and any one hearing this for the first time would suppose that all this work had all been done in this case and therefore should be charged for. It was
4875 not done in this case; it was done in the other cases, and today in Bureau County there are two cases pending wherein there is a claim for these services which will be made here, and it has been made in the other cases, and we ought to come to a point sometime where the bill is paid.

Mr. DUNCAN: I don't care to have a misunderstanding here on the part of counsel. The witness testified very clearly that certain of his work, such as looking up the Sanitary District channel, the Chicago River, the taking of depositions, and so forth, was done in behalf of all these cases; and certain other work was done in behalf of this case particularly and applies to no other. The witness has not said, nor does counsel for the plaintiff say, nor does the plaintiff itself expect to be paid any part of the work excepting what in the judgment of the court would particularly apply to this particular case, but this case should stand its proportion of it, and that is all any other case has been asked to do.

The COURT: Read the question. If it refers to the cases that the witness says he was trying while this case
4876 was being tried, I will let him answer; otherwise not.

Mr. CHIPERFIELD: There are three of those cases that were tried down there?

The WITNESS: In Bureau County. There were three of the cases up to the time covered by this trial where

a claim for attorneys' fees was pending and undisposed of before that court. On two days that there was a hearing in connection with this trial, court had adjourned down there, but I was engaged in the trial of the cases down there with the exception of those two days all the time this case was on trial.

In Bureau County I was assisted by Mr. Trimble of Princeton and Mr. Doyle of La Salle. Mr. Doyle is a member of the firm of Duncan, Doyle & O'Connor. I was not present in the court room for so much as a single hour during the trial of this case, and so far as the court room work is concerned did not participate at all.

The sixteen days I have mentioned were all for matters pertaining to this particular case, except allowing a day or two for the declaration and commencing the suit in connection with other suits down here and for the depositions. Prior to the commencement of this suit I did not particularly discuss this case other than the descriptions, at the time of making the declaration. I cannot give you the date of those sixteen days. I spent a day
4879 with Mr. Wyeth. That interview was had before any contract was made. There were three days, the one with Mr. Wyeth at his home, one at the general offices and one at the office of Duncan & O'Connor at Ottawa which I charged for. This contract was made and after the contract was abrogated I met Mr. Duncan and we spent a day at the offices in La Salle. Then I met Mr. Hazen at Mr. Duncan's office another day, three of them altogether, one day spent down in La Salle. That was long after the filing of the declaration and before the written contract was abrogated. I cannot say accurately how long before the actual trial the contract was abrogated; it may have been three or four years; it may have been three or four years after the filing of the declaration.

Q. Now, isn't it true that the only reason which you

had for abrogating this contract was for fear if there was a special contract there could be no claim under the statute, and isn't it true that your understanding remains the same as to compensation with the coal company? A. No, our understanding is different.

The reasons you have stated did not cause the abrogation of the contract. The reason the contract was abrogated is that the suits became more and more troublesome by reason of delays, the death of many witnesses and the lapse of time, and we had a talk with Mr. Hazen and made a new contract with him. No specific sum was discussed.

4882 I have not been in court since the commencement of this trial until the question of attorneys' fees came up.

4883 Mr. Duncan examined me in chief while upon the witness stand. He is the same Mr. Duncan who is entered of record as counsel in this case.

4884 VINCENT J. DUNCAN, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Donnell.

My name is Vincent J. Duncan; practiced law in Ottawa, Illinois, since June 1, 1893. In 1904 and 1905 was a
4885 member of the firm of Duncan, Doyle & O'Connor. Know Mr. Wyeth; he resided in Chicago in 1904, secretary of the La Salle County Carbon Coal Company. Its coal mines were located in the Township of La Salle, La Salle
4886 County. Knew Mr. Hazen. In October, 1904, he was treasurer and assistant manager to Mr. Wyeth.

Our firm was employed in this matter in the fall of 1904, and individually I performed certain services for the plaintiff concerning this suit before the commencement of the suit. The first service I rendered was at a conference with Mr. Hazen which lasted nearly half a

day going over the lands with him, which was prior to the
4887 conference subsequently had with you a few days after.

Some time before suits were begun you came down to Ottawa in reference to this suit and a number of other suits in which yourself and our firm were engaged as attorneys, and brought a pencil draft of a proposed declaration with you to fit the suits in which the Sanitary District was to be defendant and the land owners plaintiffs. We conferred over the declaration, prepared it for printing, it was printed and I looked after the proof and proper arrangement of it, whatever little work there was connected with that. Afterwards the printed forms were completed and delivered to us, and with you helping we prepared the declaration in this case together with the declarations in a number of other cases. The declaration in this case consisted simply in using the printed form provided as I have described and inserting in them the descriptions of the land, which in some instances were not easy to secure, signing the declaration and filing it.

4888 We used the descriptions in the declaration that were also used in the notice. Subsequently my appearance was entered for the plaintiff and has continued on the records since that time. I have been in court on every occasion when a settlement of the pleadings took place or a court order entered down to the time the trial began. Since the commencement of the suit I have had at least a dozen conferences with Mr. Wyeth and Mr. Hazen, and I went to La Salle for the special purpose of working on this case about seven or eight days.

4889 JAMES L. O'DONNELL, a witness for the plaintiff, recalled for further cross-examination, testifies as follows:

Q. Mr. O'Donnell, do you mean to state that on the demurrers there was any special argument in this case,

or on the declaration generally, or didn't the arguments apply to all the cases? A. Why my recollection is it applied to more than one case. How many I could not say.

Q. Don't you know as a matter of fact and recollection that the orders were general to all the cases in La Salle
4890 County upon one argument and on presentation? A. I should say not.

Q. Don't you know the only demurrer that ever was argued in La Salle County in connection with any of these cases was a demurrer that was argued before Judge Blanchard, before his death, and upon his ruling pleas were filed in 1905 and have never been changed or amended since with the exception of the special plea in this case that was submitted to the court without argument? A. That may be true, I would not swear to all the cases. I know there was more than one case involved in the argument, but I don't know just how many.

Re-direct Examination by Mr. Duncan.

I consider the services rendered in this case as being necessary to the interests of the plaintiff in this suit.

Whereupon a recess was taken until one o'clock P. M.

January 11, 1913, 1:00 P. M.

4891 VINCENT J. DUNCAN, a witness for the plaintiff, recalled for further direct examination, testifies as follows:

Before adjournment I spoke about conferences had by Mr. Hazen and Mr. Wyeth with me in Ottawa, in our office and also my visits to La Salle. There were a number of pleas filed in this case that were similar to the
4892 pleas filed in the other cases here, and in connection

with all of the cases here in this county against the Sanitary District we came into court on a number of different days. The orders entered and the record in this case would show the number of days.

This case we feel should be charged with its proportion of those services. There is one plea however, in this case that did not appear in any other case, and that was the special plea filed denying, as I recall it now, the right of the plaintiff to own the surface of any land but that which was necessary for the purposes of its incorporation, and that it could not claim damages to any such real estate which it had no right to own. We prepared and filed a demurrer to that plea and we prepared and argued the demurrer and came into court and had the demurrer sustained. How much time was spent in court at that time I cannot now recall, but I remember very clearly of spending some little time in the preparation of the case and the finding of authorities on that question.

I believe however that the question raised by the demurrer was submitted to the court without much argument. I think that counsel for the defendant attended 4893 the day of the hearing of the demurrer.

From the time of the commencement of this suit until the present time, there were a number of orders for continuances from term to term. The main ground was the absence of one or the other of the counsel representing the defendant, in the active attendance on the Legislature. We tried to procure a trial in the spring or early summer of last year, had the case set for trial and motion was made for continuance supported by affidavits. There was an extended hearing and some attorney from Chicago representing the district came down and took charge of the motion, presented it to the court, and the court sustained the motion and granted the postponement.

4894 With reference to the motion for continuance we were here in court quite a little time and we prepared and I think spent the larger part of the day on the question that was raised by that motion.

I visited the offices of the La Salle County Carbon Coal Company at La Salle in connection with this case at least twice with you, and on this case especially looked over the deeds and maps and records of the La Salle County Carbon Coal Company, and conferred with Mr. Hazen as to the past history of the land and checking up the descriptions that we had in our declaration with the records
4895 that they had there in their office, and conferred generally about the work necessary to the preparation for the trial. There were half a dozen witnesses or so present. At a time in addition to the two conferences at Hazen's office, I went over the land on three occasions; twice with Mr. O'Donnell and Mr. Hazen. The other
4896 time I was accompanied by Mr. Butters, Mr. Hazen and Mr. Swift.

I never visited any of the land in Section 14. When Mr. O'Donnell and Mr. Hazen was with me we went over Sections 21, 22 and 23, and a small part of 24.

In addition to what I have already testified, all the usual work done in preparation for a trial was engaged in by me to a more or less extent. When the cause was
4897 finally called for trial, I was home. On September 23, 1912, I started in the trial of a case called in Bureau County of Reinke *vs.* The Sanitary District. We continued the trial during the week beginning September 23d, and I returned there on the week beginning September 30th, and continued in the trial all of that day, and on that night I was taken sick, and all of Tuesday. I entered court on Wednesday and in the afternoon of that day was unable to continue. The doctor diagnosed my illness as pneumonia and sent me home. I was at home

for quite a little while. The attack was not very severe but under instructions from the doctor I could not enter any place where there were many other people and therefore could not engage in a trial at the time.

I was at the office a great deal of the time but at home steadily for two or three weeks.

4898 Not being able to engage in the case myself and on account of your attendance at Princeton being still continued in the trial there, it made it necessary to have Mr. O'Connor and Mr. Butters take charge of it. Before they entered upon the preparation of the case, I conferred with Mr. O'Connor a number of times, also with Mr. Butters. Mr. Butters and I visited La Salle together, we took an automobile and went over the ground with Mr. Hazen and Mr. Swift.

At the time the trial began my physician advised me it would not be safe for me to go into the trial of a law
4899 suit at that time. The trial continued from November 7th, until the first Saturday in December, when the jury returned its verdict. The case was submitted to the jury the first Friday of December.

I worked with Mr. Butters and Mr. O'Connor every Saturday and some of the Sundays during the trial. I
4900 prepared many of the instructions and helped in the preparation of all of them. Mr. Butters and Mr. O'Connor worked evenings during the trial. I have been engaged in the general practice of both law and equity.

4901 Q. What in your opinion were the services of Mr. Butters and Mr. O'Connor reasonably worth according to the usual and customary fees at this bar for the time actually spent in the trial of this case?

Mr. CHIPEREIELD: I object to that as incompetent, irrelevant and immaterial, not the proper test to govern the assessment of fees.

Objection overruled; to which ruling to the court,

the defendant by its counsel then and there duly excepted.

A. Well, I would find it easier and more in accordance with the exercise of my judgment on the basis which you have mentioned, and other matters, to give an opinion as to the value of the services rendered by—of all of the services rendered on behalf of the plaintiff in the case.

Before that question is put I would like to make a suggestion that there was other services rendered by me that I have not testified to. During the trial there were a great many witnesses here on behalf of the plaintiff and it occurred quite frequently that witnesses were examined
4902 by me in the office and their knowledge of the land ascertained, and the result of such examination was given to the attorneys engaged in the trial. There were a great number of witnesses examined nearly every day. I was not here but I knew what was going on. I assisted in that line of work. Many of the witnesses resided out
4903 of the City of Ottawa. Court began at nine o'clock in the morning and ran until twelve, beginning again at one fifteen and continued until five. In a general way I was acquainted with the questions that arose both of law and fact.

Q. Now you may state whether or not from your knowledge of the case and your observation of the case, the services rendered by yourself, Mr. O'Donnell, Mr. Butters and Mr. O'Connor were necessary to the proper trial of the case.

Mr. CHIPERFIELD: I object to that as calling for the
4904 conclusion of the witness upon a matter which the court would have to determine from the evidence in the case.

Objection overruled.

To which ruling of the court, the defendant by its counsel then and there duly excepted.

A. I think they were.

Q. Now, what in your opinion were the services of the four attorneys whom I have named throughout the case, reasonably worth according to the usual and customary fees for like services at the La Salle County bar at that time?

Mr. CHIPERFIELD: I object to that as incompetent, irrelevant and immaterial, no proper foundation has been laid, not the proper test to be adopted for the assessment or determination for the value of attorneys' fees.

Objection overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. In my judgment they were worth \$6,000 at least.

At the time the case was tried the contract in existence
4905 with plaintiff was that its attorneys should receive reasonable compensation for services rendered. I was authorized by the plaintiff to employ Mr. Butters.

Cross-Examination by Mr. Chiperfield.

At the time Mr. Butters was employed I told him
4906 that he should receive reasonable compensation for his services, such proportion as he earned. That was to be determined by him and his client.

I have found the original contract and will show it to the court.

Mr. CHIPERFIELD: I ask for it to be produced, if the court please, in the record.

Mr. O'DONNELL: Not as a witness, he hasn't a right to make the witness do that.

Mr. CHIPERFIELD: I don't care whether he is a witness or whether—

Mr. O'DONNELL: Mr. Duncan is a witness and he can-
4907 not be compelled to do anything with the reporter at all.

Mr. CHIPERFIELD: Is that all?

Mr. O'DONNELL: But whether Mr. Chipperfield is going to—if he asks him to produce it that is one thing, but Mr. Duncan is not his servant just now.

Mr. CHIPPERFIELD: I am very glad of that, but my question is this, if he will do that. If that is not a proper question objection will lie, but I don't care to be lectured by the gentlemen who so recently arrived. If he had been here longer I might submit to it. Now my question is if he will hand it to the reporter and have it marked with an appropriate exhibit number. I want to offer it in the record. If I cannot get it in the record I cannot.

The COURT: I think I will let him answer the question.

The WITNESS: If the court please, the contract in question was signed by this plaintiff and a number of others. Who else signed this contract in our judgment, we submit to the court, has no business in this hearing, nor has it any business as a part of this record.

Mr. CHIPPERFIELD: I object to this statement by the witness unless he is making it as counsel. There is a question pending and counsel here representing him.

The WITNESS: I am answering that question to the court, and I presume that my remarks are addressed to the court.

4908 Mr. CHIPPERFIELD: I am objecting to the statement, if your Honor please.

The COURT: I will let him finish his answer.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

The WITNESS: I would have no objection whatever to counsel on the opposite side seeing the body of the contract or the signature of this plaintiff to the contract. Farther than that counsel in this case has no interest whatever in this contract, and that or any other part of the contract has no business in this case as we understand it, and we submit that question to the court.

Mr. CHIPERFIELD: Mr. Sheriff, will you please ask the clerk to come in.

The COURT: Let me see the contract.

(Witness thereupon handed document to the court.)

The COURT: I will order the contract produced for the benefit of counsel on the other side in the record, and the signature of Mr. O'Donnell and Mr. Duncan and the signature of the plaintiff in this case, but I will sustain the objection to the exhibition of the signatures of other plaintiffs or persons interested in suits against the District, as I am not able to see the relevancy of that, and
4909 I am not able to see that it is of any consequence to the defendant in this case.

Mr. CHIPERFIELD: Who the others may be?

The COURT: Yes.

Mr. CHIPERFIELD: I am not at this time trying to pry into anything except that which affects these parties, that is all.

The COURT: You may have the contract and you may have the signature of James L. O'Donnell and Vincent J. Duncan, and the signature of the La Salle County Carbon Coal Company by H. S. Hazen, treasurer. That includes everything connected with this contract except a multitude of other signatures, and so far as I can see the defendant is not interested in that and it will not benefit
4910 them any. You may look at the body of the document. You can read that part. Read it.

Mr. CHIPERFIELD (reading): This agreement made this Third day of October, A. D. 1904, between James L. O'Donnell, and Vincent J. Duncan, parties of the first part, and the undersigned owners of land, parties of the second part; witnesseth,

That the parties of the first part hereby agree to prepare and prosecute in the Circuit Courts of the counties in which the land involved is situated, suits in behalf of

each of the undersigned property owners to recover damages to said lands against the Sanitary District of Chicago, and to conduct said cases to final judgment if necessary, and to argue the same in the Appellate and Supreme Courts of the State of Illinois, in case it shall be necessary, in consideration of the following compensation: Such sum of money as may be allowed in any or either of said cases by the trial court as courts under the law, and in addition ten per cent. in each case of the amount recovered to be paid to the different property owners, and in case said claims for damages, or any or either of them, are settled and adjusted, ten per cent. of the amount paid in such settlement or adjustment.

The parties of the second part in consideration of the
 4911 premises severally agree to pay to parties of the first part traveling expenses, and necessary cash outlay in the preparation and conduct of such suits to procure the attendance of necessary witnesses, including surveyor or civil engineer, if required, for the trial of said cases, to advance necessary fees of court officers and fees for for printing if necessary in the Appellate or Supreme Court, and to pay the above compensation to the party of the first part in case of recovery or settlement.

It is further agreed between the parties hereto that in either case should there be no recovery upon final trial no compensation will be paid in such case to parties of the first part for their services. Should either land owner decline to prosecute his suit to final judgment or settlement, then he shall pay to the parties of the first part reasonable compensation for services rendered.

Witness our hands this Third day of October, A. D.
 1904.

JAMES L. O'DONNELL,
 VINCENT J. DUNCAN.

And among other signatures is the "La Salle County
 4912 Carbon Coal Company, By H. S. Hazen, Treas."

I cannot state how long it was before the contract was abrogated but it is in the neighborhood of three or four years ago. At the time this case was being tried and during all the time that this case was being tried, certain cases in Bureau County were being tried in which my firm was engaged as counsel. Several members of our firm participated in the trial in Bureau County. I began it and stayed there from September 23d until October 3d, and Mr. Doyle my partner took my place and remained until the conclusion of the trial work in Bureau County, some time in the middle or latter part of December Thereafter and until practically the present time I was advised by my physician not to enter a court room for
 4913 a period of probably eight weeks after October 3d. During the trial of this case I did not feel as if I could safely engage in trial work in the court room. Prior to that time it was my intention to try the case if I had been at liberty to do so.

I and my firm are claiming for services during the same time this case was pending in Bureau County. I do not understand when a firm is employed that it is in contemplation of law the members of the firm.

4914 Mr. CHIPERFIELD: Q. I will ask you to state what has been the annual receipts of your firm for the years 1909, '10, '11 and '12?

Mr. O'DONNELL: To which I object as immaterial.

4915-16-17 Argument and sustaining of objection.

To which ruling of the court, the defendant by its counsel then and there duly excepted.

Mr. CHIPERFIELD: Q. When you say that a fair fee in this case would be \$6,000, what have you allowed per day for court work?

4918 A. I did not take into consideration in estimating the value of the services rendered any particular items.

If they were to be paid only for the days work in court.

I should say that they earned at least \$75 a day each. We have been general counsel for the La Salle County Carbon Coal Company the last year or two. If you strip the balance of the services off of the case, I think the trial of the case was worth \$150 a day. I think the actual
4919 trial work was something like twenty-two or twenty-three days including the day of the reception of the ver-
4920 dict. I helped on the outside. I do not know that there was not a single question asked of any witness in this case, so far as the court room work was concerned, on behalf of the defendant except by myself. I was not in
4921-22 the court room at any time. I do not know whether as a matter of fact the statement in this case was made by yourself, that every witness examined by the defense was examined by yourself, that every witness cross-examined was examined by yourself, and that the argument was made by you. I took no part in the trial of the case whatever in the court room. This was my first arrival here in the matter of costs. I have already answered to the
4923 effect that insofar as anything done in the court room is concerned I don't know a thing about it.

4924-25 I will be unable to give you exact answer as to the number of days I put in on the pleadings in this case, but in my best judgment the work incident to the pleadings in this case, would make, so far as my services are concerned, five or six days. The filling in of the description was not the only thing necessary. The declaration
4926 is there and it shows how much space the description takes up. I cannot answer that with exactitude. We had the descriptions for the notice. The length of time taken to fill in the descriptions I could not tell. It would be purely clerical aside from supervision to see it was done right.

4927 The pleadings in this case were not argued particularly, they were argued generally. I think this case should

bear its proportion of the services insofar as that feature of the work done is concerned. Regarding the plea that the corporation did not have the right to own property in this case, I am not sure you were here. I think there was some counsel that was here. I know there was somebody here.

Q. There was absolutely no one in case appeared on that plea.

Mr. CHIPERFIELD: I sent that plea to Judge Eldridge with a letter stating that we filed the plea and that it would come up in the usual way and that we did not care to appear.

4928 Mr. O'DONNELL: I guess you are right about that.

The WITNESS: I think there was somebody here just the same. My recollection is there was one of the attorneys here. There was no argument produced by anyone and the plea upon the demurrer being filed was held
4929 bad by the court without argument. In general all the pleadings were settled with reference to these cases. There were like pleas in the balance of the cases and they followed the ruling in that case.

I lived in La Salle all my life up to '93, knew the land, knew the river and there was nothing new to me about this proposition up to the time I moved to Ottawa. I
4930 knew the physical condition in a general way. Up to the time this case was commenced I had tried one case against the Sanitary District and had assisted in the trial of one case and had begun the trial of the second case, and in those cases had become familiar with and had investigated the questions that arose except those that were peculiarly incident to this land.

I spoke about preparing instructions. I had to draw some of them, they were not simply the same instructions that may have been used in other cases; some of them were and some of them were not.

4931 Q. It is also true that the preparation which you have made in this case and the facts which you have gained knowledge of or elicited, you expect to use and are using in other cases which you are trying against the Sanitary District, isn't that true? A. No, except insofar as I have testified.

I think you are mistaken about my being engaged in over 100 cases against the defendant at the present time involving the question of the overflow of the Illinois River. I should say at the present time there are pending not over ninety. I think there are somewhere in the neighborhood of ninety still pending. In connection with some of those cases I have made an investigation of the physical conditions.

4932 I was present in Chicago when the depositions were taken but not at Joliet. I did not ask any questions whatever upon that occasion, although I conferred with other attorneys who were conducting the examination, other attorneys who were concerned in a similar manner.

Q. When you say that a fair and reasonable charge was \$150 a day which should be made for the trial of this case, you would bring the balance of the amount up to \$6,000, what would you fix per day for the work up to that time? You have testified to perhaps a dozen days and Mr. O'Donnell has testified to about sixteen. A. I have testified that in my judgment the usual and ordinary fees for services rendered in this case, as a whole,
4933 in my judgment, taking every item into consideration that is usually taken into consideration on such questions, is worth \$6,000.

Q. What do you charge for the work out of court per day? A. I would charge \$6,000 for the whole work.

Q. Is that the best answer you can make? A. That is the answer that I give.

Q. Is that the best answer you can give? A. The best answer that I can give, and I want it distinctly understood that in making that, giving that conclusion, that I have personal knowledge of every single bit of work done, and based upon my experience of matters of that kind that is a reasonable and ordinary charge for the character of work, considering the amount involved, the character of the case and the character of the work and the results obtained.

Q. Now, to make up your \$6,000 on the basis which you have fixed for the trial, it would require \$2,750 for the work that was done outside. Do you think that the investigations that were made, the three or four times conferring, the preparation of this notice, the filing of the stock declaration, and the taking of depositions and the other work which was divided among a large number of cases, was worth in this case \$2,750? A. I think that all the work that was done in this case is worth \$6,000.

4930 Q. Now, answer my question, Mr. Duncan. A. I have answered it as well as I know how.

Q. Now, if you will please answer my question, will you please answer my question? A. I have answered it, if your Honor please, I think.

Mr. CHIPERFIELD: I insist now on an answer to the question that I asked. The question he answered was another question. I think I am entitled to an answer to this question.

The COURT: Well, he says he has answered it as well as he can. I don't know as I ought to say he can answer it better.

Mr. CHIPERFIELD: I want to make every effort that I can to get an answer, that is all I can do, and then I will proceed to something else.

The COURT: I will give you an exception.

Mr. CHIPERFIELD: All right.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

4935 There was only one contest made on a motion for a continuance based upon the ground that the attorney for the defendant was in attendance on the legislature, but in the estimate which I have made that matter does not figure appreciably in the estimate which I have placed on the value of our services.

Q. Now, you have spoken about your services in conferring with Mr. Butters and Mr. O'Connor when you became ill? A. Yes.

Q. Do you think the Sanitary District should be called upon to make any compensation for the fact that you were called out of the case, for consultations that were necessary on that account? A. I am not asking for any
4936 compensation for services either for ourselves or Mr. Butters or Mr. O'Connor for acquainting them with the results of the work or the time necessary to do it.

Q. When did they first have any acquaintance with this case? A. Well, it was not very long after I first got home. When it appeared that the Sanitary District cases in Bureau County were going to be for trial and would be continued in their trial during the fall, and I was at home not well, and that it would be necessary to have this case prepared for trial and to try it, arrangements were then made. I should say that would be along about the middle of October or earlier than that.

Q. If the firm of Duncan, Doyle & O'Connor had been able to attend to this case, would it have been necessary to have two attorneys engaged?

Mr. O'DONNELL: I object to that, your Honor, not calling for any fact.

The COURT: I think I will sustain the objection.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

In the settlement of the pleadings in this case, this case should be charged with its proportionate share. In figuring its proportionate share I should say this case was more important three times over than any of the others. When I say it is important I mean the amount involved which should require it to bear a proportionate amount of the time and services rendered in that respect and the proportion should be based upon its relation to other cases. I am not figuring on the financial *ad damnum* of \$200,000 as originally made. There is considerably more care taken in settling the pleadings in a \$100,000 case than there is in a \$100 case as a rule.

4938 I do not know that the record will show that every amendment in this case that has been made has been made because of mistakes of the firm of Duncan, Doyle & O'Connor. I do not remember that on the 10th day of September, 1905, we amended our declaration. I think there was a slight amendment made on the 31st day of
4939 March, 1912. I don't remember whether we have amended our declaration no less than four times to give us an opportunity to linger around the court.

4940 For services outside of the court room I have made no specific charge.

4941 Q. I ask you to do so now? A. I have not testified as to the value of my services except in connection with the services of all the others engaged in this case and except in their connection as a whole proposition.

Q. Now, will you please answer what you have there in your estimate of \$6,000 for the services which you rendered outside of the court room, what the charge per day was? A. Well, I have answered that question.

4942 Q. I ask you now if you have not fixed a fee of \$3,250 for the actual trial of the case? A. I did with the modifications mentioned at that time.

Q. No, without any modifications. What do you charge

per day for services outside of the court room, how do you arrive at that? A. In the modification I spoke of there is no such contemplation had.

Q. Now, why do you contemplate a different standard for the services? A. I have said what the services outside the court room are worth.

Mr. CHIPERFIELD: If your Honor please, I submit the witness has not stated, that is not true. I am asking him to state and I want to know as to the fact of the matter and we are entitled to it.

The WITNESS: I told you that the services rendered outside of the case together with the services rendered in the court room when I arrived at them generally and as an entirety are reasonably worth \$6,000.

Mr. CHIPERFIELD: I move to strike the answer as not responsive to the question.

“The COURT: I sustain the motion.

“Mr. CHIPERFIELD: Q. Now, I ask you again if you please, to state in your estimate what you have charged
4943 for the services outside of the court room per day?

A. Well, considered in connection with the whole case I should say that they and the other services together would be worth \$6,000.

Q. In order not to prolong the matter or to enlarge the record, I ask you finally for the last time, I ask you again if you will state now in your computation what you have charged and what you think would be fair and reasonable for the services outside of the court room per day? A. I have not, in giving my estimate of the services rendered in this case, separated any items, or put in any items of that kind.

Q. Will you now do so? A. No.

Re-direct Examination by Mr. O'Donnell.

The WITNESS: I have got a statement to make if your Honor please.

4944 Mr. O'DONNELL: You may make any explanation that you desire.

The WITNESS: One statement I desire to make, and that is in my testimony on direct examination the question was asked of me which included the services, the value of all the services rendered on behalf of the plaintiff in reference to this case, and there was no subdivision into items of any kind and I estimated only the value of all the services as a whole.

ANDREW J. O'CONOR, a witness for the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. O'Donnell.

My name is Andrew J. O'Conor; I am a lawyer, residing in LaSalle County. Practiced ten years in Ottawa, engaged in general practice. I am one of the attorneys for plaintiff. I was engaged in the actual trial in this case nineteen days. The case was called for trial on the 8th of November when we had some discussion in relation to the pleadings, which took up part of the afternoon, and the case then went over until the following Monday morning. My connection with the case started about two weeks before that. I familiarized myself with the case
4946 more or less in a general way. I went to LaSalle I think on four or five different occasions before the case was actually called. I think two of the occasions however were subsequent to November 7th after it was passed temporarily. Went down and went over the land. We made preparation for proof of title by getting the deeds
4947 and looking up the abstracts and made some investiga-

tion in the recorder's office, and looked up the law on that question. There was a plea filed denying title.

From the time the jury was selected until the case was submitted to the jury, I participated in the trial. The first day I think we started in at ten o'clock, and I think that was true of each Monday that the court would adjourn over from Friday until Monday morning at ten o'clock, or about ten thirty. Other days the court started at nine in the morning and ran until five o'clock in the afternoon. Some days court adjourned at a quarter to
4948 five and one or two days we ran until five-thirty.

The plaintiff, I think, called thirty-eight witnesses in addition to the testimony of the witnesses who appeared in the depositions. The defendant, I think, called ninety-four witnesses.

4949 On the trial one of the main issues upon which testimony was taken was the value of the land and as to the condition of the land before and after the turning in of the Sanitary District water. The scope of the examination comprehended men who were actually on the land and worked it and the testimony introduced by the defendant included testimony of witnesses from up in Wisconsin in relation to the condition of the Desplaines and Fox, Rivers, and witnesses from Chicago in relation to the condition of the Chicago River and its branches.

4950 There were a number of witnesses brought in from Iroquois and Ford Counties. They also had some expert witnesses from the University of Illinois in relation to the growing of crops; a number of river men from Henry and Peoria and farther down in relation to the condition of the river prior to the construction of the levees.

There were quite a few maps introduced and 281 photographs.

4951 My preparation was confined to the land on Sections 21, 22 and 23, and a small part of 24. During the trial

it was necessary to see the witnesses and we interviewed a great number of them, sometimes in the morning having them come in on one of the earlier cars and talking with them briefly before going into court. Also during the noon hour. I worked prior to nine o'clock in the
 4952 morning and also Mr. Butters and I worked in the evening ordinarily until ten o'clock and sometimes a little later, other nights not so late. During the trial I spent two Saturdays and Sunday at La Salle. I spent one Sun-
 4953 day afternoon at La Salle with Mr. Hazen going through the records seeking to produce papers asked for by subpoena *duces tecum*. I did some work during the trial on the preparation of the instructions, but most of the work along that line was taken care of by Messrs. Duncan and Butters.

It is hard to say how much time I spent in preparation before the trial, but I should say two weeks, more or less. Towards the latter part, I will say the last week, I presume it took all of my time. During the trial we were quite busy both during our presentation and during
 4954 the presentation of the defense, with questions that were arising during the trial of the case, and figuring out just exactly how different things should be met, whether it would be necessary to bring in evidence in rebuttal. And there were questions as to competency of exhibits, maps, plats and diagrams and things of that kind, and questions of law. It was a case during the trial of which you
 4955 could hardly afford to devote any time to anything else.

The record consists of 4,261 typewritten pages, of which 326 or 327 pages were depositions. In addition to which there were a great many exhibits.

Cross-Examination by Mr. Chipperfield.

The record also included the examination of the jury,
 4956 the statement of counsel in the argument and the remarks

of the court, and all the proceedings that occurred on the trial.

I was conversant with the situation and general layout
4957 of the land in a general way. I had no detailed knowledge in relation to what the land did or its characteristics prior to my connection with the suit. Prior to the trial I made myself familiar with the facts that Mr. Duncan had previously prepared, in addition to going to work to get ready for trial. I could not go into the trial as it was a new matter comparatively to me, without preparation as I had expected Mr. Duncan to try the case. My connection before that time with the case was of a very general character. The other attorneys had seen some of the witnesses and I had a list of them, over
4958 100 witnesses, and before the trial actually started it was my business to see many of the witnesses that had not been interviewed before. Mr. Butters was with me and there was another young man by the name of McFedron, who was in the employ of the plaintiff. He was well acquainted with the men who had knowledge as to the conditions and he suggested names of those who might be acquainted with said conditions. Aside from the work which I undertook in the way of familiarizing myself with the case, all the other work was work in which I participated in the court room, and sometimes I worked late at night.

4959 It is customary for a lawyer to try his case in court and do what he can with reference to it before and after the trial. I had very little to do with the instructions.
4960 During the time I was engaged in the trial my partner, Mr. Doyle, was engaged in the trial of other cases against the defendant. While I did not see him I hope to have some substantial evidence of that presently. There are motions for the allowance of attorneys' fees in those cases, as a member of our firm, for the services of our firm at that time.

4961 This case commenced on Monday of the week after election and continued until the first Friday in December. There were no sessions on Saturday and the only thing done on the last Saturday was the reception of the verdict. The first week there were five days of court. The next week there were five days, the next week there were three days and the next week there were five days
 4962 of court unless we include the time of the reception of the verdict, which would make it six days. The number of days that we were actually engaged in the trial of the case from its commencement to the termination was 18 days, excluding the day the jury returned its verdict.

A. E. BUTTERS, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Donnell.

4963 My name is A. E. Butters; have been a member of the La Salle County bar since 1889; first connected with this case in March or April, 1912. I spent about two days prior to coming into court on the day it was set for trial. It was the day it was continued for the term. The first
 4964 day I visited La Salle with Mr. Duncan; this was about ten days before the case was set for trial. I knew I was going to be in the case, however, several weeks before that and talked with Mr. Duncan on two or three occasions when he reviewed the case to me. Immediately before the trial of the case I put in about five days' time and afterwards participated in the trial with Mr.
 4965 O'Connor. Know what attorneys were present on the part of the defendant on the trial; Mr. Chipperfield, his brother, Mr. Beebe, Mr. Hawthorne and Mr. Malone were
 4966 there.

Cross-Examination by Mr. Chipperfield.

I could not say that as to Mr. Malone he had as much as a word with you during the trial. I knew he was doing work on the case. I assume that it was largely seeing witnesses. I know so far as the trial was concerned that the entire work of the trial, except as I have suggested for a few hours during the reading of the depositions, was conducted entirely by you so far as the court room work was concerned. Your brother was present a small portion of the time, not a large portion. I know Mr. Beebe was present a part of the time, but I did not keep track of that. So far as the trial of this case was concerned, it was conducted on the part of the defendant by yourself. You made the opening statement in the case, you examined all the witnesses and you argued the case finally to the jury.

The work I did in the spring of 1912 was caused by the incapacity of Mr. O'Donnell by sickness. I did not expect to further continue in the case until Mr. Duncan's illness. I participated in the trial of the case the number of days that Mr. O'Connor has testified to.

It is customary with any attorney who has the interests of his case and of his client at heart, to prepare both before and after the court room work, and this case presented unusual features in many respects, although my experience as an attorney has demonstrated that much of the real work of counsel comes in a case both before and after the court room work, and of the two the court room work is the easiest work.

BENJAMIN F. LINCOLN, a witness for the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Donnell.

My name is Benjamin F. Lincoln; been a practicing lawyer since 1873, one time judge of the County Court, La Salle County. I practice in this county. My practice
4971 has been of a general nature. I believe I am familiar with the usual and customary fees of lawyers in the trial and preparation of cases in this county. I heard all the testimony of Mr. O'Donnell, Mr. Duncan and Mr. O'Connor, but I did not hear quite all the testimony of Mr. Butters.

Q. Assuming that the services were performed for the claimant with the understanding that he was to pay what the services were reasonably worth, what, in your opinion, were the services so rendered reasonably worth, according to the usual and customary fees in this county at that time?

Mr. CHIPERFIELD: Objected to, incompetent, irrelevant and immaterial; no proper foundation has been laid and that it does not appear—it is not the proper test to be employed in the expression of opinion as to the fees.

4972 Objection overruled; to which ruling of the court the defendant, by its counsel, then and there duly accepted.

A. I am accustomed to estimating services generally by the day, and in my judgment the services of the attorneys in this case would be worth from \$50 to \$75 per day, dependent upon whether they were employed at night. If they were employed at night to any extent, my judgment would be their services were reasonably worth \$75 per day for such time.

Q. In a case of this character what in your opinion

would be the reasonable value of the services of an attorney per day in the preparation of the case, necessary preparation of the case.

4973 Same objection; same ruling; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. I make no distinction between the preparation of the case and trial of the case. I believe the services of an attorney are worth just as much in the preparation of the case, during the time he is employed in such preparation, as in the actual trial in court.

Mr. CHIPERFIELD: The defendant, because of the fact no proper foundation has been laid and the proper test has not been employed, declines to cross-examine.

DUNCAN MACDOUGALL, a witness for the plaintiff being sworn, testifies as follows:

Direct Examination by Mr. O'Donnell.

My name is Duncan MacDougall. I am a member of the firm of MacDougall & Chapman; been practicing in La Salle County continuously since 1873, engaged in 4974 general practice.

Heard testimony of O'Donnell, Duncan, O'Connor and Butters.

Q. What in your opinion would be a fair, reasonable compensation for the entire work performed in the case, assuming such testimony to be true, in this La Salle County Carbon Coal Company case *vs.* The Sanitary District, the preparation and trial of it?

"Mr. CHIPERFIELD: The same objection. I may have the benefit of it without a re-statement, or shall I re-state it?

Mr. O'DONNELL: I am willing the objection be understood.

Objection overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. Assuming the service to have been performed that the witnesses testified was performed in the case and ap-
4975 portioning so much of it to this case as ought to be that they prepared in part on this case and other cases as stated by the witnesses, and eliminating such work as was shown to have been duplicated on account of the illness of the attorneys, in my judgment a reasonable, usual and customary fee for the services necessarily rendered in this particular case and a fee fixed by contract between parties competent to contract in this county, taking into account the issues and the importance of the suit, would be \$6,000.

Mr. CHIPERFIELD: We move to strike the answer, because it is incompetent, irrelevant and immaterial, and does not adopt the correct test or mode of ascertaining or fixing the fees to be allowed.

Motion overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

Cross-Examination by Mr. Chiperfield.

4976 My experience and I think the general rule here is different from the one stated by Judge Lincoln. I rarely charge by the day and I think the bar here generally as a rule don't charge by the day. Take into account when a law suit is finished the importance of the litigation, the time taken, the result of the litigation, and character of the defense you had to go up against and all those questions, and then fix a gross sum which ought in fairness between you and the client to be the compensation

charged. I have made this fee on that basis. For the services which were rendered in the active trial of this case I would say \$65 to \$100 a day for each lawyer. For the preparation of the case a higher compensation should
 4977 be allowed. It is customary to charge about the same. For the argument of a demurrer and the preparation of the declaration and of notices and all work applicable to many cases, I know of no rule that would entitle a person to multiply the total number of days, but I think more than 1/35th would be charged ordinarily by the lawyers according to the established usage of this bar where there were thirty-five cases. Where the same questions are presented there should be an apportionment, but
 4978 there should be more charged in view of the fact that a larger interest is involved in the particular law suit.

Where a man prepared to try 100 cases and the main facts would be the same, the information which he has gained and elicited upon the investigation would be equally applicable to ninety-nine others as well as the one in particular and in fixing the compensation where there has been a general preparation of that sort, the fact that there are other cases pending should also be taken into consideration. I would not undertake to fix the specific charge for the work of examining and going into court and arguing a demurrer because there are so many elements that go into that matter, that I doubt whether anybody except the lawyer who actually performs the service could tell what that service was worth. I do not think there is any established custom with reference to a charge for services of that kind. Where the work takes two or three days I would say it was the same per day as the time for the trial of the case. Would think a fair *per*
 4980 *diem* for that work would be from \$50 to \$100 a day.
 4981 If a stock declaration is prepared and printed it thereafter becomes a question of merely filling in a de-

scription. It might take a day or two but the work required is almost purely clerical. The same with the notices except that each notice would require special attention. Like the declaration, after you prepared a form that is good, the work is clerical.

I am interested in two cases against the Sanitary District. It is matter of complete indifference to me as to what fee shall be allowed here. My firm was interested in the case of *Gentlemen vs. The Sanitary District* which was tried six or eight months ago. I did not participate in the trial personally. No attorneys' fees were fixed by the court, I think they have been fixed by agreement.

The other case that I referred to is the *Utica Hydraulic Cement Company* case and the land lies in the vicinity of the Village of Utica.

L. W. BREWER, a witness called by the plaintiff, being sworn, testifies as follows:

Direct Examination by Mr. O'Donnell.

My name is L. W. Brewer, a member of the La Salle County bar. Practiced since 1871. Am familiar with the usual and customary fees of attorneys for services in La Salle County. I heard the testimony as to fees in this hearing.

Q. Have you an opinion, Mr. Brewer, as to what would be the fair and reasonable fee according to the customary fees prevailing at this bar in the matter in hearing, assuming that the services testified to by those four witnesses were rendered, and were necessary to the case?

A. I think I have.

Q. What in your opinion would be such reasonable fee?

Mr. CHIPERFIELD: We object to that on the ground it is incompetent, irrelevant, and immaterial. No proper

foundation has been laid, that it is not the proper test to apply in the ascertainment of the fees in this matter."

Objection overruled; to which ruling of the court, the defendant by its counsel, then and there duly excepted.

4988 A. Considering the importance of this case and the able and vigorous manner in which it was defended, as well as the able manner in which it was tried on the part of the plaintiff, and looking at the result and the time consumed in the trial, the number of witnesses, the number of exhibits, maps, plats and photographs, I think that \$6,000 is a very moderate fee indeed.

Cross-Examination by Mr. Chipperfield.

I think that would be a reasonable fee for the reasons testified to. I think \$100 a day would be a moderate fee
 4989 for each attorney. I heard a part of the trial but am basing my testimony upon the testimony of the witnesses.
 4990 A reasonable fee for the argument of a demurrer that would require several days for preparation and a day in which to present it, which was applicable to some thirty or forty cases, the number of cases would make no difference. If a man hired me to defend him for murder today I would charge for that, and if I was hired by another man tomorrow I am not going to work for the second man for nothing because I had charged the first man. If I had forty clients or if I had one client with one case that I had to defend, or if I have forty different clients in forty different cases and forty different questions, I would not work for thirty-nine for nothing because I had charged one with what would be the reasonable service in that case. Where there is a declaration filed, a stock form printed declaration applying to a lot of litigation, my idea is for the day taken to file those
 4991 forty declarations there should be forty times the charge

for filing one declaration. My idea is where a man comes in and argues a demurrer and it takes a day, and it is applicable to 40 cases, that he should charge each and every client for the day. I would charge each client for
 4992 the service that I rendered, one man as much as the other.

4993 Mr. O'DONNELL: We desire to offer the files in the case in evidence, your Honor, including the verdict of the jury.

Mr. CHIPERFIELD: We object to that as being incompetent, irrelevant and immaterial.

"Mr. O'DONNELL: And that will close our evidence.

Mr. DUNCAN: We also want the record to show that the motion for new trial has been overruled; that the motion in arrest of judgment has been overruled and that judgment on the verdict—

The COURT: Let me take up this one motion first.

Mr. DUNCAN: Very well your Honor.

Mr. CHIPERFIELD: When they get through with their case, I suppose somewhere—somewhere along the way we may put in something.

Mr. DUNCAN: We are simply closing our part of the case, that is all. I am not closing yours.

4994 The COURT: I think I will overrule your objection, Mr. Chiperfield.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

4995 Praecipe filed in this case January 14, 1905.

4996 Summons in cause dated January 14, 1905, with return of service showing service on defendant.

4997 Summons filed January 23, 1903.

4998-5005 Declaration in said cause filed January 14, 1905.

5006 Demurrer to declaration.

5007 Filed in said cause March 15, 1905.

5008 Amendment to declaration filed October 25, 1905.

5009 Demurrer to amended declaration filed December 30, 1908.

5010 Plea general issue filed November 7, 1912.

5011 Plea, statute of limitations filed November 7, 1912.

5012-13 Plea, non-ownership, filed November 7, 1912.

5014 Replications to pleas, filed November 7, 1912.

5015 Rejoinder to plaintiff's replications, filed November 7, 1912.

5016 Defendant's fourth plea, filed November 7, 1912.

5017 Demurrer to defendant's fourth plea, filed November 7, 1912.

5019 Amendment to declaration. Filed March 21, 1912.

5020-21 Verdict of jury assessing plaintiff's damages at the sum of thirty-five thousand dollars, filed December 7, 1912.

5022 The COURT: That lets everything in the pleadings go in evidence. Now is there anything further?

Mr. DUNCAN: Motion for new trial and the order overruling the same; motion in arrest of judgment and the order overruling the same; and the judgment itself when rendered by the court.

Mr. CHIPERFIELD: Oh, well, now, we are not up to any judgment. Now there is the very place where we part the ways. Whenever they get through getting in these other matters we want to take up—

The COURT: Have you closed?

Mr. O'DONNELL: Yes, your Honor, we close with those files.

Mr. CHIPERFIELD: If your Honor please—

Mr. O'DONNELL: Just a minute. We rest your Honor.

Mr. CHIPERFIELD: Now if your Honor please I want the record to show that no judgment having been rendered in this case as the basis for the assessment of any costs at the time of the introduction of this proof and at the time that we are called upon to put in our opposi-

tion to this proof, that the defendant respectfully declines to offer any testimony, and protests against any further hearing on the proof that has been offered.

The COURT: I think I will overrule the motion for a new trial and exception.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. CHIPERFIELD: Will you excuse me just a minute, your Honor.

The COURT: Yes.

Mr. CHIPERFIELD: Before we get away from this matter. Before we get away from this matter I want to complete whatever there is of it. I don't know what there is, it has been a question in my mind ever since it began, and I want to be briefly heard upon the questions involved.

The COURT: Attorneys' fees?

Mr. CHIPERFIELD: Yes.

The COURT: I will give you an opportunity as to that.

Mr. CHIPERFIELD: Yes, but I want, your Honor, this record to stand in the same condition when that time comes that it stands at this moment. I don't believe your Honor wants to alter the situation here.

The COURT: No, sir.

5024 "Mr. CHIPERFIELD: Yes. They insisted they wanted to go ahead at this time and insisted that this was the time for the disposition of this matter. I don't know what it is. I have listened to the testimony but I don't know what it is. At least I am not advised from anything that I have seen or heard and I don't want a different status of affairs to prevail when this matter is concluded than prevailed when it started. I think that we ought to dispose of this now, whatever it is.

The COURT: I think I will—do you care to say anything on the motion for a new trial now at this time?

Mr. CHIPERFIELD: Your Honor did overrule the motion for a new trial the other day, did you not?

The COURT: I don't know what the record shows.

Mr. CHIPERFIELD: Now, let us see, I have got the whole record here.

“The COURT: Read it Mr. Hull.

Mr. O'DONNELL: My recollection is everything was done except the entry of the final judgment. The motion in arrest was continued.

“Mr. CHIPERFIELD: Mr. O'Donnell is correct, everything was done except the entry of the judgment upon the verdict.

The COURT: Motion for new trial was overruled and motion in arrest of judgment.

Mr. CHIPERFIELD: That was my notion.

5025 The COURT: I presume that is so, that is my recollection now but let us see what Mr. Hull has got.

Mr. HULL: Motion to set aside the verdict and motion for new trial overruled.

Mr. CHIPERFIELD: Here is something that comes up before we get a judgment and I think it ought to be disposed of.

The COURT: You move for judgment?

Mr. O'DONNELL: Yes, I move for judgment.

The COURT: Yes, I move for judgment.

“The COURT: You object to the motion?

Mr. CHIPERFIELD: As much as we possibly can.

The COURT: Objection overruled. Judgment on the verdict, \$35,000 and costs.

Mr. CHIPERFIELD: Now we except to the judgment.

The COURT: And exception by the defendant.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

5026-33 Oral argument on behalf of defendant on question of assessment of attorneys' fees as costs.

5034-40 Oral argument on behalf of plaintiff on question of taxing attorneys' fees as costs.

5041 Mr. DUNCAN: I want to call the attention of the court to the fact that on Saturday a week ago the minute book shows motion by plaintiff for an order fixing plaintiff's attorneys' fees and taxing same as costs. Motion by defendant for rule on plaintiff to file a bill of particulars on their claim for attorneys' fees. Motion allowed and plaintiff ruled to file said bill of particulars by Tuesday next. Hearing of motion *in re* attorneys' fees set for Saturday morning commencing at 10:30.

Mr. CHIPERFIELD: If your Honor please, if judgment has been entered, before anything further is done we now desire to pray an appeal to the Supreme Court of the State of Illinois.

The COURT: I will dispose of this other matter first.

5042 Whilst the verdict is large and finds warrant perhaps in only a favorable view of the evidence for the plaintiff, it seems as though I ought not to put the limit on this end of the trial for attorney's fees. I believe that the services in this case are worth anywhere from \$3,500 to \$5,000. That appeals to my conscience, to my view of fair dealing as a lawyer and as a judge, but anything below that or anything above that seems out of proportion to my view of things.

5043 * * * * *

I believe that the price of things in this state with which attorney's fees can be compared and contrasted,

warrant that, and even on that basis anything above \$5,000 is an extreme view of the situation under this testimony. I am afraid that anything more than \$5,000 is not warranted and I would feel as if I had not the courage to state what I think about this trial. I know that in the course I am about to take, and what I have said, that I subject myself to criticism of everybody present to the effect that "Your Honor knows you have no evidence to justify it." I understand that and that is what causes me to hesitate. I know it is my duty as a judge to follow the evidence. But I fix these attorney's fees at \$5,000 and they may be taxed as a part of the costs against the defendant, and exception by the defendant.

Order of court fixing attorneys' fees of plaintiff at \$5,000, to be taxed as costs.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

5045 Prayer for appeal to the Supreme Court of the State of Illinois by defendant. Motion granted. Bill of exceptions to be filed in 60 days. Separate bill of exceptions allowed upon matter of attorneys' fees to be filed within 30 days. Prayer for appeal to the Appellate Court from the order granting attorneys' fees. Motion granted.

5046-7 Discussion as to requiring defendant to give bond on appeal, resulting in the conclusion being reached that no bond would be required.

5048 Signature S. C. Stough, judge of the 13th Judicial Circuit, State of Illinois, to the bill of exceptions herein this 18th day of January, A. D. 1913.

Certificate of S. C. Stough, judge, of the tendering of bill of exceptions to him on the 18th day of January, 1913.

5049 Certificate of authentication, clerk of the Circuit Court, La Salle County, to record.

5050 Assignment of errors.

STATE OF ILLINOIS IN THE SUPREME COURT.

April Term, A. D. 1913.

The La Salle County Carbon Coal Company, a Corporation,	} Case.
<i>Appellee.</i>	
<i>vs.</i>	
The Sanitary District of Chicago, A Municipal Corporation,	}
<i>Appellant.</i>	

ASSIGNMENT OF ERRORS.

And now comes the Sanitary District of Chicago, a municipal corporation, appellant herein, and shows to the court that there is manifest error in the record herein in this viz:

1. The lower court erred in sustaining the plaintiff's demurrer to defendant's fourth plea.
2. The lower court erred in refusing leave to the defendant to file a plea of *nul tiel* corporation.
3. The lower court erred in admitting on the trial improper and incompetent evidence over the objection of the defendant.
4. The lower court erred in refusing to admit upon the trial proper and competent documentary evidence offered by the defendant.
5. The lower court erred in refusing to admit upon the trial proper and competent oral testimony offered by the defendant.
6. The lower court erred in admitting as evidence upon the trial Exhibits 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, offered by the plaintiff over the objection of the defendant.

7. The lower court erred in improperly restricting the cross-examination by defendant of the witnesses who testified on behalf of the plaintiff.
8. The lower court erred in not properly restricting the cross-examination by the plaintiff of the witnesses who testified upon behalf of the defendant.
9. The lower court erred in refusing to allow the defendant to make proper proof of facts specified in certain offers appearing in the record after sustaining an objection by plaintiff to questions having for their purpose eliciting of such testimony.
10. The lower court erred in refusing to exclude from the evidence in this case plaintiff's Exhibit 1, as requested by the defendant in its motion at the conclusion of evidence upon behalf of the plaintiff.
11. The lower court erred in refusing to exclude from the evidence in this case plaintiff's Exhibit 2, as requested by defendant in its motion at the conclusion of taking of evidence upon behalf of the plaintiff.
12. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 3, as requested by defendant in its motion at the conclusion of taking of evidence upon behalf of the plaintiff.
13. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 4, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.
14. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 5, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.

15. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 6, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.
16. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 7, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.
17. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 8, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.
18. The lower court erred in refusing to exclude from the evidence in this case Plaintiff's Exhibit 9, as requested by the defendant in its motion at the conclusion of the taking of evidence upon behalf of the plaintiff.
19. The lower court erred in refusing at the conclusion of the plaintiff's case to grant the several motions made by defendant to exclude the testimony specified therein from the consideration of the jury.
20. The lower court erred in denying the motion of the defendant at the close of plaintiff's case to strike from the record the testimony of the following witnesses, viz: Joseph Greiner, Henry Ream, Henry Meyer, Charles Mudge, Edward Pyka, Charles Castendyck, Otto Halm, Fred A. Mudge, M. J. Charley, Abram Vorhees and Charles Dooley.
21. The lower court erred in denying the motion of the defendant made at the conclusion of plaintiff's case to strike from the record the testimony of the various

witnesses specified with reference to the overflow of plaintiff's premises, injury to, condition of, or values of crops thereon, or the use to which said premises were put since January 17, 1900.

22. The lower court erred in denying the motion of the defendant at the conclusion of plaintiff's case to strike from the record testimony of various witnesses specified with reference to any injury to crops upon the premises claimed by plaintiff for the years 1902 to 1912, both inclusive.
23. The lower court erred in granting the motion of the plaintiff to strike from the declaration certain lands specified in said motion without requiring an amendment of the declaration.
24. The lower court erred in permitting plaintiff to enter a disclaimer as to certain lands described in plaintiff's declaration.
25. The lower court erred in denying the motion of the defendant to exclude, at the close of plaintiff's case, the testimony of certain witnesses specified therein for the reason that said testimony constituted a variance between the allegations of the declaration and the proof.
26. The lower court erred in submitting to the jury the issues in the case without requiring plaintiff to amend the declaration and to eliminate therefrom the real estate which was excluded by the court from the consideration of the jury or by the voluntary act of the plaintiff in disclaiming as to such real estate.
27. The lower court erred in denying the motion of the defendant at the conclusion of plaintiff's case to instruct the jury to find the defendant not guilty under the first count of the declaration.
28. The lower court erred in denying the motion of the defendant at the conclusion of plaintiff's case to in-

struct the jury to find the defendant not guilty under the second count of the declaration.

29. The lower court erred in denying the motion of the defendant at the conclusion of plaintiff's case to instruct the jury to find the defendant not guilty under the third count of the declaration.
30. The lower court erred in denying the motion of the defendant at the conclusion of the taking of testimony upon behalf of the plaintiff to instruct the jury to return a verdict finding the defendant not guilty.
31. The lower court erred in refusing to sustain objections of the defendant to improper remarks of counsel for plaintiff made in his opening statement to the jury, to the refusal of which the defendant duly excepted.
32. The lower court erred in sustaining objections of the plaintiff to certain parts of the opening statement made by counsel for the defendant.
33. The lower court erred in failing to sustain the objection of defendant to the improper conduct of plaintiff's counsel while plaintiff's opening statement was being made to the jury.
34. The conduct of counsel for plaintiff on the hearing in the presence of the jury was improper and duly excepted to by the defendant.
35. Counsel for plaintiff made improper remarks during the trial in the presence of the jury which were duly objected to by the defendant.
36. The closing argument of counsel for plaintiff was improper in the particular objected to by the defendant.
37. The conduct of plaintiff's counsel in reference to the jury was improper.
38. The lower court erred in refusing to hear the rea

sonable argument of counsel for defendant upon matters of law involved in the suit when requested so to do by said counsel and in arbitrarily refusing opportunity to counsel for defendant to present such argument.

39. The lower court erred in refusing to allow proof of the several offers of proof made by the defendant upon the trial.
40. The lower court erred in refusing to sustain the objections interposed by defendant to questions and answers specified in the depositions read on the trial.
41. The lower court erred in admitting in evidence over the objection of defendant the various exhibits referred to in the depositions read on trial.
42. The lower court erred in striking from the record over the objection of defendant portions of the testimony contained in answers of the witnesses being examined by the defendant.
43. The lower court erred in refusing to grant motions of the defendant to strike from the record certain portions of answers of witnesses being examined by the plaintiff.
44. The lower court erred in adopting on the trial an improper rule as to the measure of damage, over the objection of defendant.
45. The lower court erred in restricting proof as to the condition of lands described in the declaration to a period subsequent to January 1, 1883, of its own motion.
46. The lower court erred in denying to the defendant the right to prove the fair cash market value of the premises described in the declaration at the time of the trial.

47. The lower court erred in refusing to admit as evidence the charter of the plaintiff corporation offered in evidence by the defendant.
48. The lower court erred in allowing the witness Hazen, over the objection of defendant, to testify as to his mental processes in reaching a conclusion as to the value referred to in the statement made to R. G. Dun & Company by the witness and introduced in evidence by the defendant.
49. The lower court erred in allowing witnesses for the plaintiff in giving an opinion as to the fair cash market value of real estate described in the declaration, to take into consideration matters known only to themselves, existing up to the time of the trial, and concerning which there was no testimony in the record, over the objection of defendant.
50. The plaintiff on the trial failed to prove ownership of the real estate described in its declaration.
51. The lower court erred in denying the motion of defendant at the conclusion of the taking of testimony to instruct the jury under the first count of the declaration to return a verdict of not guilty.
52. The lower court erred in denying the motion of defendant at the conclusion of the taking of testimony on the trial to instruct the jury under the second count of the declaration to return a verdict of not guilty.
53. The lower court erred in denying the motion of defendant at the conclusion of the taking of testimony on the trial to instruct the jury under the third count of the declaration to return a verdict of not guilty.
54. The lower court erred in denying the motion of defendant at the conclusion of the taking of testimony on the trial to instruct the jury to return a verdict finding the defendant not guilty.

55. The lower court erred in giving to the jury instructions 1 to 20, both inclusive, requested on the part of the plaintiff.
56. The lower court erred in refusing to give to the jury instructions numbered 45 to 80, both inclusive, requested on behalf of the defendant.
57. The damages awarded by the jury are excessive and the result of passion, prejudice and mistake upon the part of the jury.
58. The verdict of the jury is contrary to the law and the evidence.
59. The verdict of the jury is contrary to the evidence.
60. The verdict of the jury is contrary to the law.
61. The lower court erred in improperly instructing the jury as to the form of a verdict finding for the plaintiff.
62. The lower court erred in making improper remarks during the trial in the presence and hearing of the jury, which remarks were duly excepted to by the defendant.
63. The lower court erred in denying the motion of defendant to exclude the deposition of the witness E. L. Cooley.
64. The lower court erred in overruling the motion of the defendant to strike from the record the testimony of the witness E. L. Cooley respecting matters covered by his deposition read upon the trial.
65. The lower court erred in overruling the motion of defendant to exclude from the consideration of the jury various portions of the real estate claimed by the defendant as specified in its said motion.
66. The lower court erred in improperly permitting the witness Hazen to alter and change the effect of the statement made by him on behalf of the plaintiff in

this case to R. G. Dun & Company by stating to the jury what was his secret intention and undisclosed meaning at the time he so made said statement, thus changing the effect of said statement by undisclosed mental reservations of said Hazen at said time.

67. The lower court erred in allowing several witnesses for plaintiff to testify over objection of the defendant to the fair cash market value of the surface only of the real estate claimed by the plaintiff instead of stating an opinion as to the fair cash market value of the entire real estate described in plaintiff's declaration.
68. The lower court erred in overruling the motion by the defendant for judgment *non obstanti veredicto*.
69. The lower court erred in refusing to set aside the verdict of the jury and to grant unto the defendant a new trial.
70. The lower court erred in overruling the motion of the defendant in arrest of judgment.
71. The lower court erred in entering judgment on the verdict against the defendant for \$35,000 and costs of suit.
72. The lower court erred in entertaining the motion of the plaintiff to tax as costs and attorney's fee in said suit and to proceed to a hearing upon said motion before the entry of judgment in said cause on the verdict against the defendant.
73. The lower court erred in denying the motion of the defendant upon the hearing of the motion to tax an attorney's fee for plaintiff as costs in said suit to require the plaintiff to file a more specific bill of particulars and to grant unto the defendant a continuance upon the hearing of said motion until such more specific bill of particulars had been filed.
74. The lower court erred in overruling the protest of

the defendant against being compelled to take up the motion of plaintiff for the taxation of an attorney's fee for the plaintiff as costs before the entry of judgment in said cause upon the verdict of the jury.

75. The lower court erred upon the hearing upon the question of the taxation of an attorney's fee for plaintiff as costs in admitting in evidence plaintiff's Exhibit 1, on said hearing in the absence of a showing that proof had been made on the trial that plaintiff notified the trustees of the defendant in writing at least 60 days before suit was commenced, by leaving a copy of such notice with some one of the trustees of such district, stating the amount claimed as damages, and so forth, over the objection of the defendant.
76. The lower court erred in admitting incompetent and improper evidence at the hearing before the court on the motion for the allowance of an attorney's fee for plaintiff to be taxed as costs over the objection of the defendant.
77. The lower court erred in excluding competent testimony sought to be introduced by the defendant at the hearing before the court on a motion for an allowance of an attorney's fee to be taxed as costs.
78. The lower court erred in refusing to strike from the record the improper evidence upon the motion of the defendant upon the hearing of plaintiff's motion to tax an attorney's fee as costs.
70. The lower court erred on the hearing before the court on the motion of plaintiff to tax an attorney's fee as costs in permitting the witnesses over the objection of the defendant to adopt an improper standard and test in estimating the value of the services of plaintiff's attorneys.

80. The lower court erred in taxing as costs any amount as an attorney's fee for the plaintiff's attorney.
81. The order of the lower court taxing as costs an attorney's fee for plaintiff's attorneys is contrary to the law.
82. The order of the lower court taxing as costs an attorney's fee for plaintiff's attorneys is contrary to the evidence.
83. The order of the lower court in taxing as costs an attorney's fee for plaintiff's attorneys is manifestly a result of prejudice upon the part of the presiding judge and is and was excessive in amount.
84. The lower court erred in refusing to entertain the prayer of the defendant for an appeal to this court from the judgment entered in the trial court before ordering the taxation of costs as an attorney's fee for plaintiff's attorneys.
85. That part of Section 19 of "An Act to Create Sanitary Districts and to remove obstructions in the Desplaines and Illinois Rivers," approved May 29, 1889, in force July 1, 1889, laws 1889, page 126, as amended by "An Act to Amend Sections 4, 8, 9, 11, 12 and 19, of An Act to Create Sanitary Districts and to remove obstructions in the Desplaines and Illinois Rivers," approved May 25, 1907, in force July 1, 1907, laws 1907, pages 284-287, providing that in case judgment is rendered against any such district for damages the plaintiff shall also recover his reasonable attorney's fee to be taxed as costs of suit, is repugnant to Section 1, of the 14th Amendment of the Constitution of the United States.
86. (That part of Section 19 of "An Act to Create Sanitary Districts and to remove obstructions in the Desplaines and Illinois Rivers," approved May 29, 1889,

in force July 1, 1889, laws 1889, page 126, as amended by "An Act to amend Sections 4, 8, 9, 11, 12 and 19 of An Act to Create Sanitary Districts and to remove obstructions in the Desplaines and Illinois Rivers," approved May 25, 1907, in force July 1, 1907, laws 1907, pages 284-287, providing that in case judgment is rendered against any such district for damages, the plaintiff shall also recover his reasonable attorney's fee to be taxed as costs of suit, is repugnant to section 2, of Article 2, of the Constitution of the State of Illinois.

87. That part of Section 19 of "An Act to Create Sanitary Districts and to remove obstructions in the Desplaines and Illinois Rivers," approved May 29, 1889, in force July 1, 1889, laws 1889, page 126, as amended by "An Act to amend Sections 4, 8, 9, 11, 12 and 19, of An Act to Create Sanitary Districts and remove obstructions in the Desplaines and Illinois Rivers," approved May 25, 1907, in force July 1, 1907, laws 1907, pages 284-287, providing that in case judgment is rendered against any such district for damages, the plaintiff shall also recover his reasonable attorney's fee to be taxed as costs of suit, is repugnant to Section 22 of Article 4, of the Constitution of the State of Illinois.

88. That part of Section 19, of "An Act to Create Sanitary Districts and remove obstructions in the Desplaines and Illinois Rivers," approved May 29, 1889, in force July 1, 1889, laws 1889, page 126, as amended by "An Act to amend Sections 4, 8, 9, 11, 12 and 19, of an Act to Create Sanitary Districts and to remove obstructions in the Desplaines and Illinois Rivers," approved May 25, 1907, in force July 1, 1907, laws 1907, pages 284-287, providing that in case judgment is rendered against any such district for damages, the plaintiff shall recover his reasonable attorney's fees to be

taxed as costs of suit, is repugnant to the Fifth Amendment of the Constitution of the United States.

89. The lower court erred in awarding plaintiff execution on the judgment entered against the defendant, a municipal corporation.

Wherefore for the reasons above set forth, which the record will sustain, the judgment of said court ought to be reversed and said cause remanded.

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